

LAW

1.	Certificate in Law	L 110
2.	Certificate in Law	L 140
3.	Constitutional Law	L 150
4.	Legal Process	L 210
5.	Law of contracts	L 220
6.	The Law of Torts	L 230
7.	Criminal Law	L 240
8.	Constitutional Law	L 250
9.	Law of Evidence	L 310
10.	Land Law	L 320
11.	Commercial Law	L 330
12.	Administrative Law	L 340
13.	Family Law	L 350
14.	Jurisprudence	L 410
15.	Jurisprudence (Deferred)	L 410
16.	Business Associations	L 420
17.	Business Associations	L 420
18.	Business Associations (Supplementary)	L 420
19.	International Law	L 430
20.	Conflict of Laws	L 440
21.	International Trade and Investment Law	L 450
22.	Labour Law	L 480

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 110

CERTIFICATE IN LAW

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

ANSWER: ANY FOUR Questions.

---

1. "Although Zambia has been independent of British rule since 1964, a large body of English law is still applicable here."  
Is this statement accurate? If so
    - (i) What forms of English law are applicable? and
    - (ii) What is the legal basis of their application?
  2. Describe the composition and role of the Judicial Service Commission in Zambia.
  3.
    - (a) Outline the jurisdiction of Local Courts in Zambia
    - (b) Examine the extent to which Local Courts still have an important role to play in the determination of disputes in Zambia.
  4. When deciding cases Courts in Zambia often refer to previous decisions (or judgments) made by other Courts in Zambia and elsewhere. What are the reasons behind this practice?
  5.
    - (a) What are the main law - making organs in Zambia?
    - (b) African customary law is largely unwritten. How do the various Courts in Zambia ascertain (i.e. find out) what the applicable customary law is in a given case?
  6.
    - (a) When may a Court in Zambia sit with assessors?
    - (b) In your opinion, do assessors play a significant part in a Courts deliberations?
- 

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 140

CERTIFICATE IN LAW

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

ANSWER: FOUR Questions. At least TWO from Section A and at least ONE from Section B.

Candidates are permitted to bring into the Examination UNMARKED copies of the Penal Code (Cap 146) and Criminal Procedure Code (Cap 160).

---

SECTION A

1. Examine, giving relevant authorities, how far a person may use force to defend himself against an attack on himself or his house.
2. Michael was involved in a road crash and suffered very serious injuries to his face, including the loss of an eye. Sentali, after consuming a lot of alcohol, starts to mock Michael, making abusive remarks concerning his appearance. This causes Michael to lose control of himself. He picks up a large stick which he finds nearby and repeatedly strikes Sentali, causing fatal injuries. Consider the criminal liability of Michael.
3. Explain the importance of the case of D.P.P. v Smith (1961) to the proof of intention in the criminal law.
4. (a) Examine the meaning of the word "wounds" in section 232 (a) of the Penal Code.  
(b) George, a police officer on foot patrol, sees Melvin acting in a suspicious manner. He decides to question him but Melvin refuses to stop or speak to George. What action (if any) may George take in order to get Melvin to answer his questions. What action (if any) may Melvin take if George tries to physically stop him?

SECTION B

5. Consider criminal liability in the following cases:-

- (a) D took 50 ngwee from the pocket of a friend intending to use it for his fare home. The friend had already refused to lend him any money. Next day D replaced the 50 ngwee.
- (b) V is informed that D wishes to steal a ring which V keeps in her handbag. To facilitate his apprehension, V deliberately leaves the bag on a desk so that D can easily take the ring. D later comes and removes the ring.
- (c) D sees a criminal law casebook lying on a desk. Thinking it belongs to him he takes it. In fact it belongs to V, a fellow student.

6. Joshwa and Kaye plan to attack a security guard as he is taking money into a bank. They agree that a minimum of violence is to be used. They duly attack the guard knocking him to the ground but the guard starts to shout for help. Joshwa immediately produces a pistol and fires a shot at the guard, which misses. Kaye, who knew nothing about the pistol, pulls Joshwa away before he can fire again.

Consider the criminal liability of Joshwa and Kaye.

- 7. (a) Explain, giving examples from decided cases, the doctrine of recent possession as it applies to property offences.
- (b) Kalonga arranges with Mwamba to purchase property which Mwamba plans to steal. The theft takes place but Mwamba is apprehended and the property recovered. He reveals his intention to sell the property to Kalonga. The police tell him to take the property to Kalonga and as soon as it is handed over to him, the police appear and arrest Kalonga.

Consider the criminal liability (if any) of Kalonga.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 150

CONSTITUTIONAL LAW

INSTRUCTIONS:

TIME ALLOWED: 3 (THREE) Hours plus 15 minutes to read the question paper

The following may be consulted in the Examination

- (i) The Constitution of Zambia (1964 Edition)
- (ii) The Constitution of Zambia (1973 Edition)

ANSWER: ANY THREE QUESTIONS

---

1. Discuss fully the background politics surrounding the appointment of the Monckton Commission (1960), the work of the Commission and some controversial aspects of its recommendations. Indicate the impact which the Monckton Report had on the constitutional development of Northern Rhodesia as Zambia was then known.
2. Write a critical note on the judgements of the High Court and the Court of Appeal for Zambia in the one-party case of Harry Waanga Nkumbula and the Attorney - General for the Republic of Zambia.
3. Explain the importance of the role of Speaker of the National Assembly in the legislative process in Zambia. Is the Speaker of the National Assembly in Zambia subject to the jurisdiction of the High Court? Illustrate your answer with reference to decided cases
4. Debate on the subject of "who is more supreme and powerful under the one-party constitution of Zambia between the "Party i.e. (FNIP) and the President."

2. L 150

5. Explain why people think that the formal nature of Emergency laws in Zambia are very wide and drastic especially from the point of view of preserving personal liberties in the Republic.
  
  6. Discuss the decision of the High Court for Zambia in the case of Patel currency case (1968).
- 

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 210

LEGAL PROCESS

TIME: THREE HOURS (plus 15 minutes to read the examination paper).  
ANSWER: Any FOUR Questions.

---

"Custom is a course of law in the Zambian judicial system; but not all customary rules are given the force of law by the courts." Discuss the statutory and judicial limitations on the application of African customary law.

Give a description of the Zambian court system, and a short account of the civil and criminal jurisdiction of the various levels of courts.

"It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament...." Discuss the various rules or principles regarding the interpretation of statutes.

Trace the changes in Zambia's judicial system which have taken place since 1924, particularly with regard to the following:-

- (a) appellate structure;
- (b) appointment, qualifications and removal of judges and magistrates from office;
- (c) jurisdiction over persons.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 210

LEGAL PROCESS

TIME: THREE HOURS (plus 15 minutes to read the examination paper).  
ANSWER: Any FOUR Questions.

---

"Custom is a course of law in the Zambian judicial system; but not all customary rules are given the force of law by the courts." Discuss the statutory and judicial limitations on the application of African customary law.

Give a description of the Zambian court system, and a short account of the civil and criminal jurisdiction of the various levels of courts.

"It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity.

In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament...."

Discuss the various rules or principles regarding the interpretation of statutes.

Trace the changes in Zambia's judicial system which have taken place since 1924, particularly with regard to the following:-

- (a) appellate structure;
- (b) appointment, qualifications and removal of judges and magistrates from office;
- (c) jurisdiction over persons.



- (a) Discuss the place of precedent as a source of law.
  - (b) To what extent should English case precedent be persuasive as authority in the Courts of Zambia and why?
  - (a) What is the role played by Assessors in Zambia's judicial system?
  - (b) Should trial by jury be introduced in Zambia?
- 

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 220

LAW OF CONTRACTS

TIME: THREE hours (Fifteen minutes extra for reading question paper)

ANSWER: Any FOUR Questions.

Support your answers with decided cases and cite authorities wherever necessary.

---

1. Jennifer reads the following in the *Zambian Daily Mail*:

"Golden opportunity for ladies! Hurry up - reduce your waist with "Magic Belt". For the past several months hundreds of ladies have used the belt and benefited by it. Use the Magic Belt as per the instructions contained therein. If you fail to reduce your waist a refund of the price is guaranteed. In addition we will pay K100 to anyone who has failed to obtain the results by using the Belt. An amount of K1,000 is deposited with Zambia National Bank, Lusaka for the purpose. Beauty Centre Lusaka."

Jennifer buys the Magic Belt and uses it as per the instructions for the requisite period but fails to achieve the promised results. She files a suit against the Beauty Centre Lusaka, claiming the refund of price of the Magic Belt and K100. Will she succeed? Give reasons.

(a) Distinguish between executed consideration and past consideration.

(b) X was fishing on the bank of Kafue river. He slipped and was drowning. Eventually he saw Y a passer by and shouted "Help, Help." Y jumped into the river and saved X. X promised Y that he would pay him K200. He did not pay. Y seeks your legal advice.

2. L 220

Mutenda, a sturdy boy with dark mustache, aged 17 years, buys on credit a stereo record player and a colour television from City Radio, stating that he is over the age of 21 years. He then sells the goods to Mulemba for K2,000. The owner of the City Radio files a suit against Mutenda for the price of the goods sold. In the alternative he claims the goods from Mulemba. Mutenda pleads that he is a minor and that his contract with the City Radio is void. Mulemba contends that he has obtained a valid title to the goods purchased from Mutenda. Discuss the rights of the various parties.

Banda introducing himself as the Manager of Bata Shoe Company buys a golden ring worth K1,000 from Bright Jewellery & Co. When Banda drew his cheque book to write for the amount, the proprietor of the Jewellery shop asked him to wait for a moment. He then looked into the telephone directory and verified Banda's name and address to his satisfaction. He then accepted the cheque. The cheque was dishonoured as being forged by Banda. But meanwhile the golden ring was sold by Banda to Zulu for K500. The proprietor of the Jewellery Shop is anxious to get back his golden ring from Zulu. He engages you as his lawyer. How will you proceed to argue?

Critically examine the changes that have been effected by the Misrepresentation Act, 1967, U.K. and consequently by the Misrepresentation Act, 1968 Zambia, in the Common Law as applied in England and Zambia before the passing of these Acts.

Jolly Metal Corporation, Tanzania sells 20 tons of Iron bars to William for K20, 000 and agrees to deliver the goods at Lusaka from Tanzania. The contract was concluded on October 1980 and the goods were to be delivered in December 1980. The Tazara Railway track was damaged seriously due to heavy rains. It took almost three months before the railway track was set in order. In March 1981 William sued Jolly Metal Corporation for the breach of the contract and claimed damages. The Jolly Metal Corporation contends that the contract has been discharged due to frustration. Who among them do you think has a better chance of success? Discuss giving reasons.

7. The Metro Rice Mills & Co. has a highly lucrative business. The Mill has stopped as the Crank-Shaft is broken. The Manager of the Mill sends Patrick, an employee, to have a new Crank-shaft made from Linco Metal Works. Patrick takes the broken shaft to show as a model to Linco Metal Works. He tells Linco Metal Works that the Mill has since stopped working and the new shaft has to be made immediately. The Metal Works promised that they will make the new shaft in two days time and deliver it to the Manager of the Rice Mill. They delayed the delivery of the shaft by two weeks.

In an action for the breach of the contract, the Manager claims the following damages.

- (a) loss of profit at the rate of K200 per day for two weeks.
  - (b) K5,000 as damages which the Company would have earned under a contract with the Ministry of Supplies during the two weeks time.
- Decide whether the Managers will succeed in his contention.

Discuss the principles on which you will award the damages.

---

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

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: STATUTES and CASEBOOK.
  2. ANSWER: FOUR (4) QUESTIONS IN ALL, INCLUDING QUESTION NUMBER ONE WHICH IS COMPULSORY.
- 

1. THIS QUESTION IS COMPULSORY

With the aid of authorities discuss:

- (i) the ratio decidendi, and
- (ii) the socio-economic implications of the decision in Donoghue v. Stevenson (1932) A.C. 562

2. Yusufu v. Mohamed

In March 1979 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. This oral agreement went beyond the written agreement. In May 1979 the plaintiff transferred a portion of the property to the company formed by the defendant.

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

The defendant filed a petition of complaint against the plaintiff in the Magistrate's Court charging the plaintiff with cheating or breach of trust. An inquiry was then held by the Magistrate in an open court. The Magistrate found that no cheating had been committed by the plaintiff, saying "no criminal case of any nature could be made out of the complaint."

Question 2 Continued

He therefore dismissed the complaint.

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

3. Bonde v. Ashok and Co.

The defendants owned and maintained 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 a number of drivers. These in turn managed themselves by means of a management committee of five (5) men whom they themselves appointed.

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

According to 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 taxis owned and maintained by the defendants. The taxi in which he was a passenger was involved in a collision with another vehicle. It was established that the accident occurred because of the negligence of the taxi driver. The plaintiff sustained serious injuries. He sues the defendants for damages for negligence.

Advise the plaintiff.

4. (i) Discuss the factors which have made the courts reluctant to entertain actions and award damages for nervous shock.
- (ii) X is employed as a crane driver by Y, a company dealing in the trans-shipment of goods between Lusaka and the Port of Dar-es-Salaam (Tanzania). X's employment is on a part-time basis. One day when he was at his place of work at the company's godown (depot) in Lusaka, he saw a load from another crane drop into a room in which there were other workers of the company.

Question 4 continued

X did not see whether or not any of the workers in the room had been injured; nor did he hear a cry from the room. Fearing, however, for the safety of those workers, he suffered nervous shock and was hospitalized for a month at U.T.H. It was found that none of the workers in the room had been injured. Because X had been hospitalized, his cousin, M, had no money to go back to school. When he finally went back to his school, the school authority dismissed him because he was late by over one month. X and his cousin M sue Y for damages in negligence. What results?

5. A defendant can only be made liable for damages which a reasonable man would foresee might follow from the negligent act. With the aid of cases discuss the correctness or otherwise of this statement.
6. (i) When is a statement said to be defamatory of an individual?  
(ii) The employees of Ber, a parastatal company, decided to celebrate the 16th anniversary of Den's independence by going to Piny Island, twenty (20) kilometres off the coast of Den. For this purpose they hired the "Kide", a yacht owned and operated by the Den Tourist Corporation. On its way back unfortunately the yacht struck a rock and capsized 500 metres away from the coast. All the children, women and some of the men on board lost their lives. Ten (10) of the men on board swam to the shore. Commenting on this tragic incident, Mozi, a broadcaster on part-time service with Radio Den, stated that the ten men survivors made no attempt whatsoever to save the children, women and fellow men who drowned. He added that they were concerned only with their own survival and nothing more, and that they were a bunch of cowards and should be ashamed of themselves. This statement was untrue of (a) Ngoma, a professional life-saver, and (b) Musa, an amateur life-saver. Both had indeed tried hard to save some of the persons who drowned. Both Ngoma and Musa sue Radio Den and Mozi for damages for defamation. What results?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 240

CRIMINAL LAW

E: THREE HOURS plus 15 minutes to read the question paper.  
WER: FOUR Questions. At least TWO from Section A and at least ONE from Section B.

Candidates are permitted to bring into the examination UNMARKED copies of the Penal Code (Cap. 146) and Criminal Procedure Code (Cap 160.)

---

SECTION A

Darlington has a history of mental illness which causes him to lose consciousness and become violent if he is subjected to excessive noise. He goes to a party given by Mooya but finding the party to be very noisy tells Mooya that he must leave or risk becoming violent. Mooya gives him tablets which she says will calm him down so that he will not worry about the noise. In fact the tablets contain an hallucinatory drug which Mooya has given to Darlington as a joke. Later, whilst dancing with Mooya, Darlington suddenly attacks her causing her to sustain serious injuries.

In his statement to the police, Darlington claims that the noise of the party must have affected him and that he believed that Mooya was bewitching him (a belief brought about by the effect of the tablets.)

He is charged with intentionally doing grievous harm contrary to Section 224 of the Penal Code. You are asked to advise as to his defence in this case. What advice would you give?



Michael and his wife Gertrude were members of a small religious group who lived together outside Lusaka. The rules of the group were very strict, two of which were that no member should ever drink alcohol or abuse any other member.

One day, after an argument between them, Michael is so upset and annoyed that he goes to a bar and starts to drink. He later returns to Gertrude and boasts that because of her he had got drunk and starts to swear at her. At this, Gertrude completely loses her temper, runs and picks up an axe which is lying nearby and strikes Michael with it several times causing serious wounds. Michael is rushed to hospital but the doctor fails to diagnose the extent of his injuries, and this gives him inadequate medical treatment. Michael later dies. Medical evidence shows that proper treatment would probably have saved his life.

Gertrude is charged with murder. Consider her criminal liability.

In *Chitenge v. The People* (1966) the trial judge held that, with regard to what is now section 204 (c) of the Penal Code (Cap 146), the words "a felony" meant "any felony" and that in this respect the law of Zambia differed from the English law prior to the enactment of the Homicide Act 1957.

Examine critically whether this accurately represents the position in Zambia today and consider whether paragraph (c) is, in any case, a necessary provision in the Penal Code.

- (a) Examine the meaning of the word "wounds" in Section 232 (a) of the Penal Code.
- (b) Kephias, a Police Officer on foot patrol, sees George acting in a suspicious manner. He decides to question him but George, seeing Kephias approaching, immediately walks away in the opposite direction. Kephias calls to him to stop but without success. Kephias therefore runs up to George, points his rifle at him and says:-

"Now perhaps you will stop and answer some questions." George still refuses to do so and suddenly knocks Kephias down and runs away.

Consider the criminal liability of George.

SECTION B

(a)\* Distinguish between Theft by a Trick and Obtaining by False Pretences.

(b)\* Evans was walking through the bush when he came upon a bicycle which was hidden in some tall grass. He kept watch on the machine for a few days but no one came to collect it. He decided the bicycle must have been abandoned for some reason so he took it to a dealer in a nearby town to try to sell it. Fearing that there might be difficulties concerning the sale, Evans told the dealer that the bicycle had been given to him by a friend in payment of a debt. The dealer was suspicious and informed the police. The machine is found to have been stolen some months earlier.

Consider the criminal liability of Evans.

(a) \*Kapelwa and Musonda approach two security guards who are about to drive their van to collect the takings from a number of shops. They threaten to beat up the guards if they refuse to hand over the keys to the van and their uniforms. The guards comply. Kapelwa and Musonda then put on the uniforms and drive the van to the shops where they are permitted to take the money.

Advise as to the possible charge(s) against Kapelwa and Musonda.

(b) Mumba is employed by Chama as a gardener. One month, Chama deducts K10 from Mumba's wages telling him that this is because of his persistent lateness. Mumba explains that his wife has been very sick and this is why he has been arriving late for work, but Chama refuses to listen to him. Mumba becomes angry and threatens to hit Chama if he refuses to hand over the K10. Chama does so. When interviewed by the police, Mumba states that he only made the threat because he believed that Chama should have paid him the K10 as he had done all the work Chama had asked him to do.

What is the criminal liability (if any) of Chama?

4. L 240

- (a) Explain, giving examples from decided cases, the doctrine of recent possession as it applies to property offences.
- (b) Ndumba arranges with Chungu to purchase stolen property which Chungu plans to steal. The theft takes place but Chungu is apprehended and the property recovered. He reveals his intention to sell the property to Ndumba. The police tell him to take the property to Ndumba and as soon as it is handed over to him, the police appear and arrest Ndumba.

Consider the criminal liability of Ndumba.

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 250

CONSTITUTIONAL LAW

INSTRUCTIONS:

TIME ALLOWED: 3 (THREE) hours plus 15 minutes to read the question paper.

The following may be consulted in the Examination

- (i) The Constitution of Zambia (1964 Edition)
- (ii) The Constitution of Zambia (1973 Edition)

ANSWER: Question ONE and ANY OTHER TWO Questions

-----

1. This question is compulsory

Chimanimani was a former British dependency which became independent in 1970 under the usual Westminster-type of constitution made in London. In 1972 Chimanimani became a Republic within the Commonwealth of Nations. The government of the Republic of Chimanimani now proposes to adopt a new One-party constitution. In this respect the government is anxious that the new constitutional order entrenches certain basic or cardinal attributes of democracy; namely, a free electoral system which would enable every eligible citizen of Chimanimani to vote and freely compete in elections to all representative institutions to be created under the new constitution; maintenance of the rule of law; independence of the judiciary; respect for individual rights and freedoms; and the need to prevent development of despotic or tyrannical rule in the country by adherence to the doctrine of separation of powers. The government of Chimanimani has hired you as one of its constitutional lawyers to advise it on the following matters:

- (a) the best legal technique for the adoption of the one-party state in the country;

Question 1 continued

- (b) the views for and against the incorporation in the new constitution of a justiciable bill of rights;
- (c) a number of people belonging to opposition parties have avowed an intent to institute a suit in the courts for Chimanimani challenging the constitutionality of the introduction of one-party state in the country which they view as violating certain rights and freedoms protected under the Republican constitution of the country.

Advise the government of Chimanimani on all three counts.

Discuss with reference to the position that obtained in Ghana (1964-66), Tanzania (1965), Malawi (1966), and more so with reference to Zambia (1972). Also discuss with reference to any decided cases on these matters.

- 2. In which ways do you consider presidential forms of government to be relatively more suitable systems of governments in the conditions of African countries than a parliamentary system of governments. What are some of the criticisms that can be levelled against presidential systems of governments as compared to those of parliamentary governments?
- 3. Is it possible to contend that on a closer examination of the constitution of Zambia, it is not the "Party" which is supreme or powerful as such, but rather that it is the President who is supreme and all round powerful? Discuss.
- 4. Discuss fully the Constitution (Amendment Act) (No. 5) of 1969. Indicate why this piece of legislation is considered to be one of the most important laws that the Zambian parliament has passed both from the political and economic points of view.
- 5. Compare and contrast the Legislative Council and Executive Council under the Northern Rhodesia Order in - council, 1924, with the Legislative Assembly and the Cabinet set up under the Self-Government Constitution of Northern Rhodesia, 1963-64.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 310.

LAW OF EVIDENCE

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

---

Chande is charged with raping Brenda, a school girl aged 11 in Kabwe. He is alleged to have invited the girl to his room for tea wherein the alleged rape took place. Brenda gives unsworn evidence at the trial as she is adjudged not fit to give evidence on oath by the trial judge. Chande pleads that at the material time he was in Kitwe and that this is therefore a case of mistaken identity. The prosecution contests the alibi. They also wish to introduce to the court evidence that Catherine aged 13 and Joyce aged 11 are in a position to state that Brenda came into the dormitory weeping and with her clothes in disarray and that they heard her say "Its that dirty old pig again Chande, he did to me what he did to Charity". There is also the boarding mistress who is prepared to depose that Chande was sacked five years ago from his teaching job for making Annette, then aged 14, pregnant. The police have a witness named Benny aged 15 who two weeks previous to the Brenda case had been invited by Chande to have drinks in his house. Benny after getting drunk ended up sleeping with Chande. The police wish to have this witness give evidence.

Discuss the admissibility of the various witnesses' evidence.

One night Kandou, a University security officer, received a report about a theft of K2000 from the Bursar's department. Mojo a third year student was seen around the offices of the Bursar an hour before the break in. Most of the students suspected Mojo. This was largely because for weeks after the break-in Mojo was unusually liquid. One night Kandou accompanied by his girl friend Foloko decided to go and interview Mojo in

## 2. L 310 Evidence

tion Two continued.

connection with the theft. They found Mojo drunk. Foloko in the presence of Kandu said to Mojo "say something for your sake. They may allow you to complete your studies". Mojo thereupon said in a drunken manner in Bemba "Nine naibile nabamulonda" meaning "I am the one who stole the money." Kandu records the statement in English and states he "admits the theft". Soon after that Kandu issued a now notorious police detention order against Mojo. After 20 days in detention Mojo was visited by the campus chaplain. They said some prayers together and afterwards the priest said to Mojo, "Tell me the truth. Did you do it I may be able to help you spiritually." Mojo told the priest that he stole the money and has got some of it hidden in his room. The priest informs the police and is quite willing to testify against Mojo. Some of the money is in fact discovered inside Mojo's mattress.

Discuss the admissibility of the various items of evidence.

Mwape entered into a written contract to purchase a mine, the property of Mwanza at a price of K200,000. Mwape was told verbally that this was a good investment with the highest ore grade in the country. The property is to be transferred after 1/3 of the payment has been made in dollars at an overseas bank contrary to Zambia's foreign exchange regulations. In order to avoid detention the term 'dollars' is not used in the contract; instead the term 'real Kwacha' is used.

They also agreed orally that Mwanza is to build Mwape two executive houses in Lusaka. This was crucial for Mwape as these houses were to house the Chief Mine Engineer and his deputy. Mwape takes possession of the mine and finds that in fact the gold mine in question is an old mine with somewhat low grade ore. He informs Mwanza that the purchase price has to be reduced to K100,000. He argues that he was induced into the contract price by a misrepresentation of the value of the mine. He also insists that Mwape should build the executive houses before he can honour his side of the bargain. He also says that the contract is illegal and therefore the term 'real Kwacha' should be given its natural meaning.

3. L 310 Evidence

tion Three continued.

Mwanza insists that the court should look at the document and nothing else. He also insists that part of the payment should be made in dollars as agreed as businessmen throughout Zambia understand 'real Kwacha' to mean dollars or any other hard currency.

Discuss.

Mweemba is charged with obtaining a motor car by false pretences. He pretended that he had been sent by the owner to collect it from the garage. The prosecution had evidence by a police officer of an oral and written statement made by Mweemba. The statement was of an incriminating nature. Mweemba who is conducting his own defence says several times that the statement was obtained from him by means of a threat that if he did not speak his wife would be detained under a police detention order. Mweemba calls John, his friend, as a witness in his defence. During his testimony out of the blue he says Mweemba is a very honest man one of the few left in Zambia. The prosecution has information that 30 minutes after Mweemba had obtained the car in question by false pretences he stole a drum of petrol from Mr. Mwanza's garage. They also know that he served a jail term for assault <sup>last year</sup> and that Mweemba had in previous years obtained 3 cars from three different garages after pretending that he had been sent by the owners. The prosecutor wishes to use some of these items of evidence.

Advise the prosecutor.

On June 1st 1980 Banda went for a picnic with Fonda. They settled for the Goma lakes pleasure resort. Banda had carried with him his pistol for protection just in case they were surprised by thieves. For some reason a quarrel developed between them. Banda was heard shouting "I will kill you with my pistol" and a gun shot was heard. Peter rushed to the scene and found Banda in a pool of blood. Whereupon Fonda said, "I shot him as he threatened to kill me and had uttered the words I will kill you several times." Banda was rushed to hospital.



#### 4. L 310 Evidence

tion Five continued.

On June 2nd Banda states concerning the shooting "Fonda and Fonda alone shot me. I saw her do it. But she did not get me. I will pull through." On June 3 1980 Banda's condition has worsened being at the point of death and knowing it, he says (again concerning the wound received on June 1st) Fonda is the one who shot me. Nobody else did it. She shot in self defence. I can say no more good bye to all" Banda died. A week before this whole thing happened Banda had been telling his friends that Fonda's baby born early last year was his and he hoped that at some future date he would marry Fonda.

Two actions have arisen as a result. The child is claiming Banda's gratuity on the grounds that she is the heir and that this is supported by the statements of Banda to his friends. Fonda has been charged with the murder of Banda.

Discuss the admissibility of the various statements.

Comrade Bonzo was charged with and convicted of raping Jane in Lusaka magistrates court. The facts of the case were as follows:

Comrade Bonzo was alleged to have raped Jane Banda behind the Twentieth Century Cinema. After the incident she met two of her friends, Grace Phiri 12, and Anne Tembo, 13, near the Lusaka Hotel. Seeing the dishevelled appearance of Jane Banda, the two friends asked Jane Banda what had happened. To this question Jane Banda replied; Mwana, I have just been raped by that dirty comrade Bonzo behind the Twentieth Century Cinema; exactly the same place where he had raped Elizabeth two months ago."

At the trial, Jane Banda gave evidence on oath and narrated the incident to the Court but in her testimony she made no reference to the statement she had made to Grace Phiri and Anne Tembo. The prosecution, however, called both Grace Phiri and Anne Tembo as witnesses for the prosecution. Grace Phiri

#### 4. L 310 Evidence

tion Five continued.

On June 2nd Banda states concerning the shooting "Fonda and Fonda alone shot me. I saw her do it. But she did not get me. I will pull through." On June 3 1980 Banda's condition has worsened being at the point of death and knowing it, he says (again concerning the wound received on June 1st) Fonda is the one who shot me. Nobody else did it. She shot in self defence. I can say no more good bye to all" Banda died. A week before this whole thing happened Banda had been telling his friends that Fonda's baby born early last year was his and he hoped that at some future date he would marry Fonda.

Two actions have arisen as a result. The child is claiming Banda's gratuity on the grounds that she is the heir and that this is supported by the statements of Banda to his friends. Fonda has been charged with the murder of Banda.

Discuss the admissibility of the various statements.

Comrade Bonzo was charged with and convicted of raping Jane in Lusaka magistrates court. The facts of the case were as follows:

Comrade Bonzo was alleged to have raped Jane Banda behind the Twentieth Century Cinema. After the incident she met two of her friends, Grace Phiri 12, and Anne Tembo, 13, near the Lusaka Hotel. Seeing the dishevelled appearance of Jane Banda, the two friends asked Jane Banda what had happened. To this question Jane Banda replied; Mwana, I have just been raped by that dirty comrade Bonzo behind the Twentieth Century Cinema; exactly the same place where he had raped Elizabeth two months ago."

At the trial, Jane Banda gave evidence on oath and narrated the incident to the Court but in her testimony she made no reference to the statement she had made to Grace Phiri and Anne Tembo. The prosecution, however, called both Grace Phiri and Anne Tembo as witnesses for the prosecution. Grace Phiri

5. L 310 Evidence

tion Six continued

gave an unsworn statement but Anne Tembo gave a sworn statement. Both of them tendered in evidence the statement Jane Banda had made to them.

The defence Counsel, Kapelwa Musonda objected to the admissibility of the statement, and in the cross examination and defence indicated that Jane Banda was a woman of easy virtues who is usually found soliciting at Lusaka Hotel, and that in fact it was actually Jane Banda who had made overtures to Comrade Bonzo. He also informed the court that Grace Phiri and Anne Tembo were usually found at Lusaka Hotel in the company of Jane Banda and both were reputed to be notorious liars.

Infuriated by the nature of the cross-examination and defence, Inspector Chalwe, the prosecutor, called Comrade Bonzo's wife to testify that Comrade Bonzo was very unfaithful. He, Inspector Chalwe, also got the **permission** of the court to find out from Comrade Bonzo if he, Comrade Bonzo, had not been convicted of rape some time in the past.

In his judgement, the trial magistrate held inter alia;

- (1) That the statement tendered in evidence by Grace Phiri and Anne Tembo was properly admitted and that it was admissible to prove the facts thereof
- (ii) That the testimony of ~~Kapelwa Musonda's~~ <sup>Comrade Bonzo's</sup> wife was admissible
- (iii) That the evidence of the fact that Comrade Bonzo had been convicted of rape sometime in the past was admissible.

Kapelwa Musonda has appealed to the High Court. In his tentative grounds of appeal, he has appealed against all the above three holdings of the trial magistrate. Comrade Bonzo has come to you for advice on the relevant law of evidence relating to the issues raised in order to ascertain his chances of success. He also wants to know from you if there are any <sup>other</sup> possible grounds of appeal he can include in his appeal.

## 6. L 310 Evidence

Comrade Never Kapenda and Maria Talata lived together in Lusaka for nineteen years although there was no evidence that they had gone through any formal ceremony of marriage. During this period of cohabitation Maria Talata gave birth to a child, John Kapenda.

In 1954 Comrade Never Kapenda left Lusaka for Kampala. In August 1964 Maria Talata, assuming that Comrade Never Kapenda was dead, went through a ceremony of marriage with one white American, John Stewart. In June 1965 Maria Talata Stewart gave birth to a child whom they named Josephine Stewart. Josephine was coloured and had Chinese eyes. Maria Talata Stewart died in January 1981. Shortly before she died she declared on her death bed to John Kapenda that she believed his father, Comrade Never Kapenda was still alive because before she got married to John Stewart she had been informed by a friend that a gentleman answering the description of Comrade Never Kapenda had been seen in Kampala. Maria Talata Stewart also disclosed to him, John Kapenda, that she was doubtful whether John Stewart was the actual father of Josephine because before they got married she used to have an affair with a Chinese diplomat Chun Hua, and that Chun Hua might be Josephine's real father.

Four weeks ago, Lloyds and Co, an insurance company, instituted a civil action for a court declaration that both John Kapenda and Josephine Stewart are illegitimate. Both John Kapenda and Josephine are represented by Zulu and Co. Last week, John Kapenda wrote a letter to his solicitors, Zulu and Co. informing them of the statements his mother had made to him before she died and seeking their advice on the significance of the statements, in the light of the civil action. Before the letter could reach Zulu and Co., it was

7. L 310 Evidence

Question Seven continued.

intercepted by Patel and Co., the solicitors for Llyods and Co. and they made a photo-copy of it which they intend tendering in evidence.

Discuss the relevant law of evidence relating to the issues raised and also both the admissibility of the note and its contents.

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 320

LAND LAW

E: THREE HOURS (plus 15 minutes to read the examination paper).  
WER: FOUR questions only. At least one question from each section.  
E: Statutes may be brought and used in the examination room provided they do not contain any notes or annotations.

---

SECTION A

(a) Is the opinion that the English real property concepts of estate and tenure are irrelevant but lingering anachronisms as far as Zambian land law is concerned tenable? 6.5 marks

(b) In 1948 Mr. Kilroy a white settler had conveyed to him in fee simple Whiteacre, a high-yielding agricultural land along the Chingola railway line which was included in Crown lands by the Northern Rhodesian Government. He tilled the land extensively and also built on it an expensive villa. In 1965 after Northern Rhodesia became independent Zambia, he decided to return to England and conveyed the land to Mr. Zulu, a Zambian for K150,000.00 to "hold absolutely free from every and any encumbrance." In December 1975 Mr. Zulu also conveyed his interest to Mr. King, for K250,000 "to hold absolutely for ever."

Mr. King seeks your advice as his legal counsel on the question of the extent of his interest in Whiteacre and how to make secure such interest. What advice do you give him? 11 marks

(a) "The purpose of any rent control legislation is to afford tenants greater, not less protection, than existed under the old common law." Per Ollennu (J) in Hinawi v Bassil (1958) 3 W.A.L.R. 495, 516. How has the Zambia Rent Act (No. 12) 1972 accomplished this purpose? 6.5 marks

2. L 320

- (b) Azaad agreed to take a ten year lease of an 'executive mansion at Kabulonga' at a yearly rent of K8,000 from Basu. The agreement provided that the landlord would retain possession of a structure adjoining the premises which was to be used as a stable. The tenant paid a year's rent in advance and went into possession.

Two years later the lease agreement had still not been prepared. The tenant saw his solicitor and he advised that his occupation of the house was conclusive of the subsistence of valid lease and that, therefore, a formal deed was not necessary.

The tenant observed that the landlord's animals on the adjoining property made so much noise that his nocturnal repose was always disturbed. He now repudiates the lease agreement and instructs you to sue for damages for breach of condition concerning quiet enjoyment. Analyse and evaluate the case of your client.

11 marks

- (a) Does the view that the equity of redemption works injustice on lenders deserve your approbation?

6.5 marks

- (b) Sam mortgaged his house to Charles to secure a loan of K6,000 which the latter advanced him. The agreement provided that the loan was repayable within six years. It also provided that in the event of default the mortgagee could go into possession and treat the property as his own.

At the end of the sixth year the loan had not been defrayed and the mortgagee went into possession. In the seventh year the mortgagor tendered the mortgagee the principal sum plus interest but the mortgagee refused to accept the money contending

- (1) that the mortgagor failed to exercise his right to redeem the property timeously;
- (2) in the alternative that the transaction was a sale.

Advise the mortgagor.

11 Marks

- (a) How accurate is it to posit that the right of compulsory acquisition of land is an incident of sovereign power, and whether compensation is payable or not is a matter within the discretion of the sovereign?

6.5 Marks

- (b) Xana owns a plot of land on the outskirts of Lusaka. He was notified recently by the Minister responsible for lands that the land is to be acquired as the site for a new hospital. Although he has not yet built a house on land, he has sunk a borehole on the land, fenced and cleared it. He is worried about the quantum of compensation payable by the State to him and seeks your advice. Advise him.

11 Marks.

Nathan built a tavern, part of which he operates as a butchery, in an area falling within the Lusaka Development Plan. The land in this area is used for agricultural purposes. Before constructing the tavern, he applied for a development permit from the Planning Authority of the area. For a whole year, Nathan heard nothing from the Authority on his application. He therefore decided to go ahead with the construction work and although the Planning Authority was aware of this, it took no action.

On his business becoming very successful and posing a challenge to the business of Simon, his immediate neighbour in the area, the Planning Authority informed Nathan that his application for a development permit was unsuccessful. The reason given for the rejection of the application was that the establishment of the tavern on agricultural land was injurious to amenities of the area. Although the rejection of the application related to the tavern, the Planning Authority subsequently served an enforcement notice requiring the demolition of all the structures, by him.

What procedures and remedies would you advise as available to Nathan?

17.5 Marks

SECTION B

EITHER

The Ministry of Legal Affairs is inviting comments on the assimilation of traditional land holding into the statutory land tenure system of the nation. There is a feeling that some aspects of customary tenure of land are retrogressive and retarding the "agrarian revolution." The Ministry is also mindful of the need not to create a landless rustic peasantry.

The Ministry is inviting your comments on these particular aspects:



Question 6 continued

- (a) the nature of rights and interests in land at customary law;
- (b) security of title and the means or machinery for ensuring this;
- and (c) the criteria for determining which land under customary law is suitable for assimilation into statutory tenure and which land should continue to be held by peasant farmers for subsistence agriculture.

17.5 Marks

OR

Zambianus, a retired government officer is returning to his place of birth which is in a Trust Land. He has accumulated enough capital to enable him to venture into commercial farming. He wants to acquire 50 hectares of land in his area - i.e. Trust Land. He is however bothered by a few matters, especially the following:

- (a) procedures of acquisition;
- (b) security of tenure;
- and (c) probable direction of national land policy.

Advise him.

17.5 Marks

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 330

COMMERCIAL LAW

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

ANSWER: FOUR questions only.

---

- (a) "In English law, the law of agency has been tied to the apron strings of the law of contract." Discuss.
- (b) On March 1, Charles gave his one year old car to Dawson, a dealer in used cars, for sale at the best obtainable price. There was to be no sale until Charles had agreed to the selling price. On March 15, Dawson tendered K2,500 as money realised from the sale of the car. Charles saw the car in the house of Dawson on March 30. On April 1, Charles saw Emil drive the said car, and he enquired from Emil how he liked the car. Emil exclaimed: "Very good; it was a real bargain; and to think I had it from Dawson for only K3,000!" Advise Charles.
- (a) Distinguish a chose in action from a negotiable instrument.
- (b) Peter wishes to assign his life insurance policy to Harriman to whom he is indebted. The life policy was issued by Zambia Life Insurance Co. Peter's wife, Jane is named as the beneficiary. What are the rights and obligations, if any, of the following persons in relation to the said policy:
- (i) Peter;
  - (ii) Harriman;
  - (iii) Zambia Life Insurance Co;
  - and (iv) Jane.

Mr. Zulu, the General Manager of Zambia Industrial Holdings Co. (ZIHCO) received a K200,000 cheque for ZIHCO in settlement of a debt. The cheque was drawn on Zambia Commercial Bank (ZAMCOB) by Prof. Tanbo, a customer of ZAMCOB. Although the cheque bore on the face of it two parallel lines and the words "& Co" in between, these were written in pencil.

As one of the signatories to all of ZIHCO's negotiable instruments, Mr. Zulu wrote "Zulu per pro ZIHCO" on the back of the cheque. He also rubbed off the crossing on the cheque and paid it into his personal account with First National Bank of Zambia (FINBAZ). Three days later he withdrew the entire amount.

Discuss the liabilities of the following persons to the true owner of the cheque, i.e. ZIHCO:

- (i) FINBAZ
- (ii) ZAMCOB
- (iii) Prof. Tanbo
- (iv) Mr. Zulu.

The Ministry of Health, a department of the Government of Zambia (GRZ) entered into a contract with Mayer & Baker Co. Ltd. (MABACO) a company registered and doing business in the United Kingdom, and which specialises in the manufacture and sale of drugs and pharmaceuticals, for the supply of K50,000 worth of drugs for use in hospitals in Zambia. The goods were air-freighted by British Caledonia Airways (BICAL), a British company to Lusaka International Airport. Payment was to be made by means of letters of credit opened with the Bank of Zambia (BAZA). Insurance coverage on the goods was provided by Lloyd's England (LEN) the well-known insurers.

Dr. Sakala, the Permanent Secretary of the Ministry of Health received the goods on behalf of his Minister after he had inspected them. During inspection, he noticed that there was short-delivery of several items of drugs and several bottles broken but he nevertheless took delivery of the entire consignment.

stion 4 continued.

The drugs included serum for cattle inoculation against cattle diseases. Dr. Okpara, a Lusaka - based veterinary surgeon procured some serum from the Ministry of Health with which he inoculated 700 cows on the farm of Mr. Patel at Ndola. 350 of the animals died after the administration of the vaccine.

At the time of the demise of the animals only K25,000 of the cost of the drugs had been transferred by BAZA to the account of MABA in London. GRZ then instructed BAZA to cease and desist from making further transfers with immediate effect until an investigation into the cause of the death of the cattle had been carried out.

Discuss the rights and or liabilities of the following persons:

- (i) Dr. Okpara;
  - (ii) The Ministry of Health;
  - (iii) MABA
  - (iv) LEN and
  - (v) BICAL
- 
- (a) Alex the owner of a butchery in Livingstone consigned a quantity of beef to Beaty & Co. a trucking company for transportation to Charles, a hotelier in Kitwe. The meat was in good condition when it left the premises of Alex. Due to poor refrigeration on the vehicle of the carrier, the beef putrefied on the way. Alex learnt later, and before the vehicle reached Kitwe that Charles, his customer, had applied to the High Court to be declared a bankrupt. Advise Alex.

Question 5 continued.

- (b) Bob found a ring on his way to work one day, and took it to Joe, a jeweller to determine its quality. The jeweller said it was a 24 karat gold ring, after examining it. He said it was worth K600 and offered to sell it to Bob. Bob said he was not the owner and therefore not in a position to sell. He left as he was getting late for work, intending to return at the close of business to collect the ring.

Madam Zombi, the true owner went to look for a replacement for her ring and saw the ring at Joe's. Believing that it looked very much like her lost ring, she bought it from the jeweller for K600 in ignorance of the fact that the ring was truly her lost ring. What are the rights of:

- (i) Bob, and
- (ii) Madam Zombi against the jeweller?

Mr. Kunda, a law clerk in the law firm of Quintin & Jones at Kafue took a K3,000 loan from his Bank, Southern Commercial Bank (SOCOBA) to buy a Fiat saloon car. Repayment of the loan was guaranteed by his employers. Fiat Supply Co. (FISUCO) dealers in Fiat cars demanded K2,000 deposit payment and stipulated that the balance of K1,000 should be paid in two monthly instalments of K500 per month. Kunda took delivery of the car, a very happy man.

Exactly one week after Kunda took possession of the car, he collided with another Fiat saloon car after a Saturday afternoon drinking spree and narrowly escaped death. The mangled vehicle was towed to a garage for repairs. The manager estimated that it would cost Kunda about K1,000 to make the car road-worthy again. As the car was not comprehensively insured, Kunda approached his cousin, Mr. Kapelwa a prosperous businessman who agreed to "help" Kunda with K1,000. However he insisted that the car be mortgaged to him as security for

Question 6 continued.

repayment of the loan. This was done. One further condition was that the loan should be paid back within two months.

Two months after the near-fatal accident, the balance of the purchase price of the car remained unpaid, and Kapelwa's loan had not been reduced either. Kapelwa on his part seized the car and sold it to a man who drove it to Zimbabwe. Kapelwa realised K1,500 from the sale of the car, but kept everything alleging that he had incurred about K500 expense in his bid to recover his money from Kunda.

Exasperated and troubled, Kunda seeks your legal advice.

What do you tell him?

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JUNE 1981

L 340

ADMINISTRATIVE LAW

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

ANSWER:        FOUR questions, TWO from Part A and TWO from Part B.

---

PART A

QUESTION ONE

On 10 October 1980 a detention order was made under Regulation 31 of the Preservation of Public Security Regulations, and served on Maxwell on the same day. On 20 October 1980 a Gazette notification was published to the effect that Maxwell had been detained on the orders of the President. On 23 October 1980 Maxwell was handed a sheet of paper, written in English, stating the reasons for his detention. Maxwell says that he does not understand the statement. The statement reads: 'You have been under surveillance for the past two months during which time you have been observed to attend meetings in the company of dissidents whose objective is the forceful overthrow of the Constitutional Government of the Republic of Zambia. This makes you a threat to the security of the State.'

Maxwell writes to you from his place of detention asking you to challenge his detention. He also wants you to argue the following additional grounds on his behalf:

1. that while in detention he has been required to sleep in the same cells with 'common criminals' and was required to stand up without sleep for hours on end each day, and that this was an unjustifiable derogation from his fundamental human right not to be subjected to inhuman and degrading treatment,

Question One continued.

2. he wishes you to ask the court to award him some compensation for 'this inhuman treatment'.

Advise.

## QUESTION TWO

All private hospitals operate under licences issued by the Ministry of Health and are renewable annually. The regulations governing the issue of these licences include a provision that a licence may be refused 'if, in the opinion of the Minister, it would be contrary to the public interest' to issue such a licence.

Some months ago the Minister of Health announced a new national health policy stating that the country's medical system would be based, in future, on a system of nationalised hospitals and clinics, run by the government and providing free medical care.

The Blue Nun Hospital, a private institution which has been operating under licence for 15 years, made an application for the renewal of its licence one month ago. The Hospital Board has now received a letter, signed by the Minister of Health himself (previously all correspondence on licence renewals had come from the Assistant Deputy Permanent Secretary) notifying them that their licence application has been refused. The Minister's letter gives no reasons for his refusal.

On the same day that the Minister's refusal was received by the Board, the Government introduced a Bill to Parliament providing that 'the validity of the actions of the government or of any person holding public office shall not be called in question in any court of law'. The Government introduced this legislation apparently in reaction to a challenge brought before the courts by another private hospital which had had its licence renewal application turned down. The Government has given high priority to this Bill and, as the Government has an overwhelming majority in Parliament, the Bill will almost certainly be on the statute books in a few days.



Question Two continued.

The Blue Nun Hospital's licence is due to expire in three weeks' time. The Hospital Board are anxious to contest the Minister's decision. No appeal procedure is laid down in the licensing regulations. The Board approach you. Advise them.

QUESTION THREE. (Answer BOTH Parts (i) and (ii))

- i. X, a third year student at UNZA (School of Law) spends a night in the room of Y (her boyfriend). She is caught by a security guard doing a room-to-room check and reported to the Dean of the School of Law. The Dean sends X a note which reads: 'You have in the past year been found on two other occasions in similar circumstances. In view of the importance the School attaches to discipline in such matters, you must consider yourself indefinitely suspended from the School.'

X telephones the Dean requesting an interview to explain the circumstances of the case. Her request is rejected.

X also lodges a written appeal with the University Senate. The Senate rejects her appeal without providing any reasons. However, they send X a statement of the relevant University rule. This provides that: 'A female student who persistent spends the night in the room of any male student shall be required to leave the University unless the Senate in its discretion decides that she should be given a chance to mend her ways.'

X now **says** that both the Dean's decision and the Senate's decision do not satisfy the law and that both decisions are unfair. She approaches you to initiate legal action on her behalf.

Advise X.

Question Three continued.

- ii. Banda is employed by the University as a catering supervisor in the student dining hall. On 10 June 1980 the Students' Union alleges that since Banda's employment the food has deteriorated in quality. They also allege that Banda has been selling the University supply of food for his private gain. The University administration ignores the students' allegations.

However, on 24 June 1980 the students boycott the dining hall in protest at Banda's continued employment. The University authorities, fearful that the protest may lead to damage to University property, send Banda a note terminating his employment and asking him to accept two weeks' salary in lieu of the required notice.

Banda attempts to speak to the University authorities, but is unsuccessful. Now he comes to you, saying that the allegations are untrue and that he wishes to take steps to secure his continued employment.

Advise Banda.

#### QUESTION FOUR

Assume that after 30 April 1981, The Local Administration Act 1980 having come into force, the following events occur.

Matibini and Charles, members of both the Mineworkers' Union (Ndola) and the Party (UNIP), are expelled from the Party on 1 May, 1981. On the same day, Samuel, Member of Parliament for Ndola District, is disqualified by the High Court in Ndola from eligibility for election to the National Assembly under clause (1) of Article 88 of the Constitution 1973.

Question Four continued.

On 2 May 1981 both Matibini and Charles are nominated to represent the Mineworkers Union on the Ndola District Council. On the same day Samuel is also nominated to the Council by a 'mass organisation' operating in the district. (The Central Committee of UNIP has already refused prior approval of Samuel's membership of the Council).

On 3 May 1981, Beyani, the District Governor, as chairman, convenes a meeting of the Council, but before the meeting can take place he is suddenly taken ill.

Anxious that a meeting should take place at all costs, Crispin, the District Political Secretary, assumes the chairman's role and orders that the meeting continue as scheduled.

However, Tembo, a chief (the representative of the chiefs of the District) objects to the composition of the Council and the procedure adopted at the meeting. He says neither Matibini nor Charles nor Samuel were legally elected as councillors, as they had either been dismissed from the Party or disqualified from election to the National Assembly. Tembo further says that, in the absence of the chairman, the proper procedure was for the Council, by resolution, to appoint one of its members to preside at the meeting and not for the District Political Secretary to assume the chairmanship automatically.

The Council has come to you for advice as to how they should resolve these problems. (The relevant sections of the Act are provided).

CAL ADMINISTRATION ACT 1980 - EXTRACTS

Section 10. (1) 'A Council shall consist of -

- ) The District Governor as Chairman;
- ) The District Political Secretary as Secretary;
- ) Two District Trustees appointed by the Provincial Committee and approved by the Central Committee;
- ) all Chairmen of Ward Committees in the District;
- ) all Members of Parliament in the District;
- ) one representative from each of the mass organisations operating in the District;
- ) one representative from each of the trade unions operating in the District;
- ) one representative from each of the Security Forces;
- ) One chief elected by all chiefs of the District.

Section 12 (1) 'No person shall become a member of a Council unless-

- ) he is a member of the Party;
- ) he is not disqualified for election to the National Assembly under the provisions of clause (1) of Article 68 of the Constitution;
- ) The Central Committee has given prior approval of his membership.

Section 12 (2) 'The provisions of subsection (1) shall not apply to councillors referred to in paragraphs (a) to (f) of subsection (1) of section ten.'

Section 16. 'Whenever the chairman of a Council is absent or is for any cause unable to perform the functions of his office, such functions shall be performed by the District Political Secretary.'

Section 21. 'There shall preside at every meeting of a Council-

- ) The chairman; or
- ) in the absence of the chairman, such councillor as the Council may by resolution appoint to preside at the meeting.'

PART B

QUESTION FIVE

'The Investigator-General and his broad powers and jurisdiction further represent the commitment of the government to the respect of the human rights of the individual'. (The Hon. F.M. Chomba, the then Investigator-General, speaking at the International Commission of Jurists seminar on human rights, 1976).

Explain the powers and jurisdiction of the office of the Investigator-General and assess the contribution of the office to **the protection** of human rights in Zambia,

QUESTION SIX

'Reform by the inventive genius of the common law alone is too slow for modern conditions; it amounts at present to little more than a fumbling towards principles, and at best it depends on the accidents of litigation.'

Are the courts no longer capable of evolving new principles of administrative law to meet the needs of the modern state? Should a comprehensive system of administrative law be introduced? Discuss..

QUESTION SEVEN

What are the principal judicial remedies controlling administrative acts or omissions? Discuss possible reforms of these judicial remedies and, in particular, the extent to which they should include the right to damages.

QUESTION EIGHT.

'I predict that Administrative tribunals will eventually take over the functions of the courts - making the latter unnecessary in as far as Administrative law is concerned.'

(By a third year law student). Discuss, with reference to the powers and functions of Administrative tribunals in Zambia.

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 350

FAMILY LAW

THREE Hours (plus 15 minutes to read the question paper.)

FOUR questions:- ONE question from Section A and any

THREE from Section B.

---

SECTION A

The Minister of Legal Affairs has made a proposal to Parliament concerning the reform of the law of marriage in Zambia. He has asked for your opinion on the following:

- (a) Reasons for the reform of the law
- (b) Method of reform
- (c) Content of the reformed law.

Indicate in the situations given below the status of all the marriages i.e. whether valid, void or voidable, with explanations and citing authorities in appropriate cases. Indicate further what offences if any, have been committed.

Note: H = husband W = wife.

- (a) H contracted a marriage with W<sup>1</sup> under Bemba customary law. In 1967 H married W<sup>1</sup> under the Marriage Act (Cap. 211). The marriage was dissolved by the Lusaka urban court after which H married W<sup>2</sup> under Lozi customary law.
- (b) H married W<sup>1</sup> and W<sup>2</sup> under Tonga customary law. In 1979, he married W<sup>1</sup> under the Marriage Act (Cap. 211) but continues to cohabit with both W<sup>1</sup> and W<sup>2</sup>.
- (c) H married W<sup>1</sup> under the Marriage Act (Cap. 211). In 1980, he married W<sup>1</sup> under Bemba customary law.

## 2. L 350 Family Law

on Two continued.

- (d) H and W, both members of the United Church of Zambia were married by a United Church of Zambia religious minister in their church. Neither the minister nor the church are licensed.

### SECTION B

Monde and John were married under Ngoni customary law on 1st January 1976. On 1st January 1977 they remarried under the Marriage Act (Cap. 211). In December 1977, John committed adultery with Sekaseka. John promised Monde that he would never do such a disgraceful thing again. Monde forgave him. During this time John purchased a house for which he paid the deposit of K800 out of his own savings. The rest of the purchase price of K3,000 was to be paid in two monthly instalments. John made <sup>these instalment</sup> / payments after asking his wife to pay for household bills and expenses covering the same period of two months. The bills which she paid for amounted to K1,500. The house, which became the matrimonial home of the spouses, was conveyed in John's name.

In March 1978, John again committed adultery with Sekaseka. When Monde discovered this adultery in April 1978 she had difficulties forgiving her husband but she nevertheless forgave him for the sake of their children's welfare and they continued to live together, though somewhat unhappy.

Monde has since lost her interest in their marriage and cannot stand living with a man who has no regard for her Christian principles. In March 1979, Monde came to you for advise on her prospects for divorce and on any rights which she may have in the matrimonial home. Citing authorities, advise her fully.



3. L 350 Family Law

on B continued

Sugardaddy, a prosperous businessman owns several groceries and supermarkets in Lusaka. In 1965 his parents asked him to marry Doti a humble and uneducated village girl if he wished his marriage to be stable. Sugardaddy and Doti were married under the Marriage Act (Cap. 211). They have two daughters born in 1975 and 1977. Sugardaddy and Doti lived happily together until 1979 when trouble started because of Sugardaddy's excessive drinking habits and violent disposition. On several occasions he beat his wife after drinking beer and asked her to leave his home to which Doti turned a deaf ear. Sugardaddy and Doti continued living together until 1980 when Sugardaddy began to spend nights away from home.

During this period he told Doti that she was too untidy and simple for his class and that whenever he spent a night away from home, he spent it at one of his numerous girlfriends' flats. Sugardaddy is now living with one of his girlfriends, Tisi in Kabulonga. Tisi drinks as heavily as he does but they plan to get married as soon as Sugardaddy can secure a divorce.

Occasionally, Sugardaddy goes to his wife and children but on each occasion he has told her "I only come here because I love my children and have no grudge against them." Since Sugardaddy moved to his girlfriend's flat he has not given the wife any money to buy food for the family. As a result Doti got a cleaning job at the University which brings her K5 per week.

Unable to feed the children and herself on this amount, Doti has approached you for advice on the action she can take against her husband. Assuming that grounds for divorce exist and that she can successfully prove irretrievable breakdown of the marriage, advise her on:

4. L 350 Family Law

on B Question Four continued.

- (a) the custody, care and control of their two children;
- (b) financial provision for herself
- (c) what matters a court will take into consideration in determining her financial provision (if any).

Never Kapenda, the notorious bandit who escaped from prison went through plastic surgery in South Africa to change his appearance. Upon his return to Zambia he met Intombi at the International Hotel and introduced himself to her as Mojo. After a few outings together he proposed marriage to her and she agreed to marry him. At their engagement party Mojo revealed his true identity to Intombi and told her his true name was Kapenda. He pleaded with her not to reveal his identity to anybody as this might lead to his rearrest. Anxious to get married to him Intombi pledged not to say a word to anybody. Mojo and Intombi married under the Marriage Act (Cap. 211) under those names in 1976. In the same year, Mojo got a job with Chibuku Company Ltd. in Lusaka.

On 24th December 1978, Mojo loaded his car with 20 crates of Mosi, the property of Chibuku Co. Ltd. On his way home his car was searched by the company's Chief Security Officer who discovered twenty crates of beer in the car. Mojo admitted having stolen the beer from the company for his Christmas party. The theft was reported to the managing director of Chibuku Company, Ponda, who threatened to report Mojo to the police unless he married his physically handicapped daughter Tina Ponda. The sentence for the offence of theft by servant is seven years' imprisonment. Certain that Ponda would carry out his threat unless he complied, Mojo married Tina Ponda under the Marriage Act, Cap. 211. On the day of the marriage Ponda was killed in a road accident and Chibuku Co. Ltd. was subsequently wound up. Mojo left his two wives in Lusaka to go and look for work on the Copperbelt. But while there he met Saliya whom he proposes to marry under Tonga customary law.

5. L 350 Family Law

on B Question Five continued.

However

Mojo is worried about his legal relationship with the other two wives and has asked you for legal advice before he marries Saliya. Citing authorities, advise him fully.

Tazama Pipelines were desperately looking for staff to repair their Indeni Oil Refinery in Ndola. Peter Smith, an Englishman, and engineer in hydraulics was taken on. He was staying at the Savoy Hotel. After only two months stay in Zambia, Smith began to feel lonely although Mary, a woman he did not allow to come to Zambia (even though Tazama had offered to pay for her passage), used to send him fresh roses from London on each Zambia Airways weekend flight. Smith used to describe Mary as his wife to only very few intimate friends in his hotel. Smith later met Ilunga who had just escaped from the hard life in Limulunga in the Western Province in search of luck. After several outings together, marriage was suggested and Smith and Ilunga went through a ceremony of marriage. The ceremony was conducted by a Catholic priest in the Cathedral of the Holy Cross in Ndola. Smith and his wife continued to live in the hotel. A fortnight after the church ceremony, Ilunga's village relatives began to swarm the hotel, much to the silent displeasure of Smith. The result was that Smith spent all his spare time at the Golf Club where he met a middle-aged white woman. Suddenly he disappeared from Ilunga and work. When Ilunga finally located him, Smith was living with the white woman. Ilunga was very annoyed and immediately wrote her father "I hate that white woman and I think the marriage between Smith and me is over." Ilunga further informed her father about one incident which took place when, in a spasm of anger, Smith had hung her by the arms out from the window of their hotel room on the 5th floor, threatening to drop her down to the pavement below.

Ilunga is seeking divorce and she needs your advice. This is after 6 years of marriage. Advise her fully.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 410

JURISPRUDENCE

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

ANSWER: ANY FOUR QUESTIONS.

Read the questions carefully. Your answers must be confined to the points raised in the questions, must show awareness of the history of ideas on the points, their critical evaluation and their relevance to the contemporary world in general and the contemporary Zambian society in particular.

- 
1. The traditional definitions of Jurisprudence, e.g., those given by Austin and Salmond have an element of truth but do not adequately give the nature and scope of the subject viewed in the light of contemporary developments. The Functional definitions given by Paton, Keeton and others are, therefore, relatively more correct to-day.  
Comment and elucidate.
  2. Critically examine Austin's definition of Law and the historical background in which he gave his definition. His definition might have been partially, though not fully, appropriate for his age but is almost wholly inapplicable in a Social Welfare State as that of Zambia.  
How far do you agree or disagree with the later statement? Give reasons for your views on the point.
  3. Most of the African states, including Zambia, have statutorily provided that Customary Law shall apply provided it is reasonable, not repugnant to Natural Justice, Equity and Morality and not contrary to any written law.  
Discuss giving suitable illustrations and referring to decided cases, the above statement and show how this statutory provision has been applied in resolving disputes arising under Customary Law.

4. Critically examine Honfield's analysis of Right in a Wider Sense and comment on the utility of his analysis:
- (a) "as an aid to clear thinking and invaluable as a mental training" and
  - (b) as borne out by "an abundance of case-law".
5. The legal concept and content of ownership, and hence of property, has been shaped (like those of most of the fundamental legal concepts) by the political and social philosophy of a particular society at a particular time and by an attempt towards striking a balance between the competing social and individual interests within the framework of such philosophies.

Justify the element of truth in the above statement by a brief examination of the definition of ownership as given by Austin, the Marxist analysis of Property and ownership as actually applied in the U.S.S.R. and the concept as it is being operationally shaped in Zambia in the light of the constitutional objective of establishing participatory democracy under the philosophy of Humanism.

6. Examine the basic tenets and approach of the Sociological School of Jurisprudence dilating, primarily though not exclusively, on the views of Roscoe Pound and show that in a developing society as that of Zambia this, rather than the Analytical approach, is relatively much more relevant and useful.
7. Write brief but critical comments on any two of the following:
- (i) The Realist Approach;
  - (ii) "The meaning of 'Possession' depends upon the context in which it is used and has been shaped by policy considerations";
  - (iii) Jurist while defining the term 'Right' emphasise either the formal element e.g. of will etc. or the material element e.g. of interest, but the correct perspective is provided by those who incorporate, in their definitions, both the formal as well as the material elements.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY DEFERRED EXAMINATIONS - SEPTEMBER 1981

L 410

JURISPRUDENCE

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

ANSWER: ANY FOUR QUESTIONS.

Confine your answers only to the points raised in the questions; Give the history of ideas on the points raised with a critical evaluation, their relevance to contemporary Zambian Society and your own views.

---

"The province of Jurisprudence has been determined and re-determined by jurists belonging to different schools of thought, but the nature of the subject is such that no delimitation of its scope can be regarded as final."

Comment and elucidate.

Which of the various definitions about the nature and scope of jurisprudence do you consider to be more appropriate in the Zambian context?

For developing countries constitutionally committed to the achievements of well defined ideals and engaged in the task of social upliftment the Sociological, rather than the Analytical Positivist, approach to the definition of law is more appropriate.

Critically examine some of the prominent definitions and show how far do you agree or disagree with the above statement.

Briefly explain the doctrine of stare decisis and show that the division between ratio decidendi and obiter dicta is in fact a device primarily employed by subsequent courts for adoption or rejection of the doctrine expressed in previous cases, according to the inclinations of the subsequent courts.

Critically examine the above statement referring to decided cases.

Decided cases establish the fact that courts manipulate the concept of possession to uphold policy considerations and that the law in this area has been developed to meet the needs of the society and not in accordance with formal or classical theories.

Comment and elucidate.

Referring in some detail to Zambian, American and Indian decided cases, point out the element of truth and that of over-exaggeration in the approach of the jurists belonging to the Realist School.

Assess the contribution of Ihering, Ehrlich, Kohler and Pound to the approach of the Sociological School and critically examine the appropriateness of this approach to contemporary Zambian society.

Write brief but critical notes on any two of the following:

- (i) Practical utility of Hohfield's analysis of Right in a wider sense.
- (ii) Concept of ownership depends upon the political and social philosophy of a particular society at a particular time.
- (iii) The correct perspective about the definition of the term Right is provided only by a definition which incorporates both the formal element of 'will' and the material element of interest.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 420

BUSINESS ASSOCIATIONS

TIME: THREE Hours (plus 15 minutes to read the question paper).  
ANSWER: FOUR questions:- Questions ONE and TWO are compulsory.

---

1. Sosi is a Managing Director of TIKA Ltd., a company registered under the provisions of the Companies Act. Article 20 of the articles of association of TIKA Ltd provides that the Managing Director should serve the company for as long as he wished. This same provision was incorporated in the letter of appointment written to Sosi by the Chairman of TIKA Ltd. Now the company feels it does not require the services of Sosi and wishes to terminate his employment. Advise both the company and Sosi on their respective rights/obligations.
2. Write critically on the following:-
  - (a) requirements for co-operative membership.
  - (b) directorship in a parastatal company.
  - (c) the memorandum of association of a company.
3. Compare and contrast the methods of corporate control under common law and under the Companies Act.
4. MONDECO Ltd is a parastatal company formed under the provisions of the Companies Act. It is also a wholly-owned subsidiary of MONDEX, which is a government-owned holding company. The government, in its quest to control the affairs of all the parastatal companies, has appointed a Minister for Parastatals. Among other things, the Minister is empowered to appoint directors and to make regulations for the companies. The articles of association of MONDECO Ltd., on the other hand, provide that the shareholders shall appoint directors and shall make regulations for the company. How would you reconcile these two co-operant factors in the control of the parastatal companies?



How is statutory corporation distinguished from a parastatal company? Which of these two forms of organisation do you consider is best suited for running government business?

With respect to the pre-registration requirements of a co-operative society under the Zambian Co-operative Societies Act, explain the respective roles given to the Registrar and the Minister. In your opinion, is this a realistic way of distributing roles?

- (a) Discuss either the terms found in a typical partnership agreement or the duties of the partners.
- (b) Dixie Mabonzo, a prominent Lusaka businessman, for two years supplied large quantities of stationery to Bungwe Partners who are the publishers of a notorious Campus paper called "Monkology." When Dixie rendered his bill for settlement, he was informed by one of the partners that the partnership had been dissolved and firm assets had been distributed. The partners involved were - Ric Majoza, Mic Moja, Rose Kaku and Rommie Modesti. Upon hearing of the dissolution of the partnership, Dixie approached his lawyer who advised him to single out Ric and Mic for suing on a partnership debt on the ground that those two were in good employment. The Court of UNZA gave judgement to Dixie but the judgement remained unsatisfied for six months. Dixie was then advised to sue Rose Kaku and Rommie Modesti on the debt. But the two defendants applied to the Court to have the other two co-partners joined in as defendants. Advise the four partners on their respective rights and obligations.

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - AUGUST 1981

L 420

BUSINESS ASSOCIATIONS

TIME: THREE hours plus 15 minutes for reading the questions.

ANSWER: FOUR questions (question ONE and at least ANY ONE question from each section).

---

1. Write critical notes on the following:-

- (a) The Morrison theory of arms-length control;
- (b) Relationship of the functions of the Minister and the Registrar under the Co-operative Societies Act, 1970 with regard to promotion of a co-operative society;
- (c) Directors' duty to act bona fide in the interests of the company.

SECTION A: PRIVATELY OWNED COMPANIES

2. Between July 1970 and January 1981 Muzaionela was employed as General Manager of The Spark Newspaper Limited, which publishes a daily newspaper called "Spark". On several occasions during that period Muzaionela had been warned by the Minister of Information for disseminating what the ~~Government~~ labelled "counter-revolutionary" and "unproductive" ideas, but being a staunch believer in the freedom of press, he refused to heed the Minister's warnings. In January this year the axe fell: the Minister accompanied by two huge policemen walked into the offices of The Spark Newspaper Limited and told Muzaionela:

"You are sacked with immediate effect, and you must vacate the company house within one week."

Question two continued

Muzaionela was then dragged out of his office. The following day he received a letter from the Personnel Manager of the company confirming that he had been sacked on the instructions of the Minister and that the Board of Directors of The Spark Newspaper Limited was to be informed accordingly. Muzaionela wrote back to the Personnel Manager challenging the Minister's power to terminate his employment because the power to "hire and fire" was vested in the Board of Directors under article 10 of The Spark Newspaper Limited Articles of Association. Further article 40 stated that the General Manager was entitled to stay in company house for at least three months after termination of employment. At this point the Minister wrote to Muzaionela advising him to buy a copy of Government Gazette issued on 1st January, 1981, in which it was stated that the Minister of Information held the portfolio responsibility for all matters relating to information in the country. At the bottom of the letter the Minister added:

"P.S. Remember to vacate the house as per my order." Upon the receipt of the Minister's letter, Muzaionela wished to seek a legal opinion. Prepare the relevant opinion.

3. Kasaka, one of the four directors of Mabwe Enterprises Ltd walked into Lusaka Club one Friday evening and chose a counter stool that was in a corner. This was a vintage point because next to him were Kibenge and Bolingo whose trade was to bring emeralds, alias bela, from the Copperbelt and sell them on lucrative Lusaka blackmarkets. After a couple of beers, Kasaka stood up and said: "I am one of the directors of Mabwe Enterprises, gentlemen, and my name is Mr. Kasaka. My company deals in gem stones." Kibenge and Bolingo did not believe their luck for they were looking for persons such as Kasaka. Spontaneously and like an orchestra the two opened their mouths to respond to Kasaka's introduction, but eventually it was Bolingo who introduced

question three continued.

Kibenge. The two men claimed to be traders in tourmaline, which looks like emeralds, but has different chemical properties. Kasaka was very impressed by his new contacts and promised that his company would place an order for four kilograms of tourmaline. A week later four kilograms of gems looking like tourmaline were delivered to Mabwe Enterprises with an invoice for K20,000. On examination it was discovered that the gems were actually emeralds - and the law prohibits anybody to possess or acquire that gem without a special permit from the Chief Mining Engineer. Upon learning of what had happened, the other three directors of Mabwe Enterprises convened an emergency meeting (to which Kasaka was not invited) at which it was resolved to block the payment of K20,000 to Kibenge and Bolingo. Kibenge and Bolingo then filed a suit in the High Court challenging the resolution of the three directors and praying for specific performance. Discuss the important legal issues likely to be raised in this suit.

#### SECTION B: PARASTATAL ORGANISATIONS

Discuss the philosophy behind the formation of parastatal organisations and, in the case of parastatal companies, explain how that philosophy conflicts with traditional company law.

Section B, continued.

5. Pumulo, by virtue of his position as Under Secretary in the Government, was nominated as a shareholder in ZIMCO on 1st July, 1981. The articles of ZIMCO, on the other hand, did not make public office a condition precedent to becoming a shareholder. On the 10th of July Pumulo resigned as Under Secretary on health grounds and on 20th July he died of cancer. His wife, as the survivor, wishes to inherit the husband's shares in ZIMCO on the strength of article 35, which reads-

In the case of death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he **was** a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

How would you resolve this problem?

SECTION C: PARTNERSHIPS AND CO-OPERATIVE SOCIETIES

6. Discuss critically the Registrar's role in the supervision of co-operative societies. What do you think should be done to improve that role?

Section C, continued.

7. (a) Discuss the terms found in a typical partnership agreement.
- (b) Dixie Mabonzo, a prominent Lusaka businessman, for two years supplied large quantities of stationery to Bungwe Partners who are the publishers of a notorious campus paper called "Monkology." When Dixie rendered his bill, he was advised by one of the partners that the partnership had been dissolved and that the partners were working for various firms within Zambia. The partners involved were Ric Majoza, Mic Moja, Rose Kaku and Rommie Modesti. On the advice of one fourth year UNZA law student, Dixie sued Ric and Mic on the partnership debt on the ground that those two appeared to be doing well financially. The court of UNZA gave judgment to Dixie but the judgment remained unsatisfied for six months. Dixie was then advised by another law student to sue Rose Kaku and Rommie Modesti on the same debt. The two defendants applied to the court to have the other two co-partners joined as co-defendants. Advise the four partners.

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY SUPPLEMENTARY EXAMINATIONS - SEPTEMBER 1981

L420

BUSINESS ASSOCIATIONS

TIME: THREE HOURS.

ANSWER ANY FOUR QUESTIONS.

---

1. Write notes on the following cases:-
    - (a) J.P. Karnezos v. Hermes Safaris Ltd. [1978] Z.L.R. 197.
    - (b) Foss v. Harbottle (1843), Hare 461
    - (c) Baker v. Raine Engineering [1971] 3 A.L.R. Comm. 264
  
  2. In what respect does a parastatal company differ from a statutory corporation?  
  
Explain the rationale behind these two distinct forms of public enterprise.
  
  3. Discuss the co-operative principles as seen in the Co-operative Societies Act of Zambia.
  
  4. (a) What advantages can one derive from a partnership that are not found in a company?  
  
(b) Discuss the duties of directors in a partnership.
  
  5. It is often said that the Zambian companies Act is archaic, do you agree? Give reasons for your view.
- 

END OF EXAMINATION - L420

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JUNE 1981

L 430

INTERNATIONAL LAW

TIME: THREE hours (plus 15 minutes to read the question paper.)  
ANSWER: FOUR questions:- THREE (3) From Part I and Only ONE (1)  
From Part II.

---

PART I.

1. "As objects of study, the sources of international law and the law of treaties must be regarded as fundamental: between them they provide the basic particles of the legal regime. The sources of the law with which we are concerned here are principally but by no means exclusively the FORMAL sources, viz., the legal procedures and methods creating rules prima facie of general application which are legally binding. The formal (or legal) sources are commonly contrasted with the material (or historical) sources of law which provide evidence, and sometimes authoritative evidence of the existence of rules. However, this distinction is sometimes difficult to maintain particularly when custom is involved and in practice the material sources acquire great prominence." Brownlie p. 1 Principles of Public International Law. Second Edition.

Discuss fully the formal and material sources of international law.

2. Examine critically FOUR of the following:-
- (a) Extradition and Rendition
  - (b) Condominiums
  - (c) The usque ad coleum theory.
  - (d) The FRONTIER LANDS Case ICJ (1959) p. 209.
  - (e) Dualism and Monoism.



2. L 430 Part I

3. "The subject matter of occupation is terra nullis" said the International Court of Justice in the Western Sahara Advisory Opinion of (1975) at page 12. With reference to the Eastern Greenland Case discuss occupation as a mode of acquiring state territory and contrast it with annexation.

4. (a) Consider the following facts and explain the implications using the current law of the Sea:

A German merchant vessel registered in Liberia called at the port of Dar-es-salaam to off-load a cargo of machinery from Denmark. While in port a quarrel developed between the German radio-controller of the ship and a Tanzanian dockworker. The quarrel ended in the death of the Tanzanian. However before the Tanzanian police arrived at the port the ship had left and was now 10 miles from the port. The police decide to pursue the ship.

(b) What is the "baseline" of a coastal state?

5. (a) "Nationality" has various important incidents at international law. What are they?

(b) The third recital of the Preamble to the Vienna Convention on the Law of Treaties 1969 affirms among other things the important principle of "pacta sunt servanda". What do you understand by this principle?

PART II

6. The veto power enjoyed by each of the five major powers has often hindered the speedy solution of international crises and has often "paralyzed" the organs of the United Nations. With reference to specific incidents examine the path taken by the General Assembly in circumventing this veto in order to diffuse crises around the globe.

3. L 430 Part II

7. It is said that the Law of Nations is primarily for regulating the relationships between states; but we also know that states are not the only subjects of international law for there exist other entities which by their very nature and because of their functions possess a very large measure of international personality and by virtue of this personality are capable of operating on the same international plane as states. Which other entities can these be and what is their status under international law?
8. (a) Discuss the relationship between the International Court of Justice (I.C.J.) as the principal judicial organ of the United Nations and the Permanent Court of Arbitration. (P.C.A.)
- (b) Examine Article 36 of the Statute of the International Court of Justice (I.C.J.) and discuss the jurisdiction exercised by it under the so called "Optional Clause".

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 440

CONFLICT OF LAWS

TIME: THREE HOURS (plus 15 minutes to read the question paper).  
ANSWER: ANY FOUR questions. - Your answers must be supported with  
Judicial pronouncements and statutory provisions.

---

1. "Declarations made by the de cujas himself are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the persons to whom, the purpose for which, and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expression". (Per Lord Buckmaster in Ross v Ross [1930] A.C.I. (H.L.) at pp. 6-7)

Discuss how far the English Courts have given importance to such declarations when they are asked to decide the domicile of a particular person.

2. (a) To what extent does the principle of Locus Regit actum apply to marriages in the Zambian Conflict of Laws?
- (b) Ivor and Joan, domiciled in a state whose laws recognize marriage by repute, live together in that state as man and wife. After they have lived together for a year, state legislation is passed invalidating such marriages.

Consider their marital status (a) six months,  
(b) two years, after they began to cohabit.

3. (a) How do the courts reconcile the objective and subjective theories propounded by Westlake and Dicey respectively in order to ascertain the proper law of a contract in a given case?

Question 3 continued.

(b) Which is the proper law in the following cases:

(i) A, a Scottish merchant in Bombay enters into an agreement with X, a Hongkong merchant, for sugar to be shipped from Java to Bombay. The contract contains a stipulation that in case of dispute, it will be settled by London brokers in the usual manner whose submission would be made a rule of law.

(ii) X, a French firm carrying on business in England agrees to sell to A, another firm carrying on business in London, a quantity of barley to be shipped from Algeria, payments had to be made in London. However, due to an insurrection in Algeria, the goods cannot be delivered to A. Is A entitled to damages for non-performance of contract by X?

4. According to the Zambian courts whether an act done in a foreign country is or is not a tort depends upon the combined effect of law of the country where the act is done (*lex loci delicti commissi*) and of the law of Zambia (*lex fori*), if an action is brought before a Zambian court.

Discuss critically.

5. (a) Discuss various theories which are generally considered by the English courts to determine the validity of a transfer of a tangible movable and its effect on the proprietary rights of the parties.

(b) Explain which law governs the priority of competing assignments of a debt or other intangible thing.

6. (a) Describe the conditions which have to be complied with before a foreign judgment can be enforced in England by action.
- (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 judgments.
7. Would an English court recognize the decree given by the respective courts in the following cases:
- (a) In 1958 Bjorn, a Swedish national domiciled in Ontario, obtained in Ontario a decree nisi of divorce on the grounds of his wife's adultery. Before the decree was made absolute, Bjorn re-acquired his Swedish domicile of origin. Assume that by the law of Sweden the Ontario decree absolute was not sufficient to dissolve the marriage.
- (b) H and W are domiciled in England. They go to Florida in June 1951 and acquire a domicile there. In 1952 H resumes his English domicile (without being **guilty** of disetion) **leaving** W in Florida. In 1953 W applies for and obtains a divorce in Florida.

THE UNIVERSITY OF ZAMBIA  
UNIVERSITY EXAMINATIONS - JUNE 1981

L 450

INTERNATIONAL TRADE AND INVESTMENT LAW

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

ANSWER: FOUR questions - TWO from each Section.

Students may bring into the examination unmarked copies of G.A.T.T. provisions, and the Industrial Development Act (1977).

---

SECTION A

1. What economic benefits can individual nations or groups of countries expect to derive from a successful application of the most-favoured-nation (M.F.N.) treatment embodied in article 1 of the G.A.T.T.?
2. The governing principle of regional economic integration is to eliminate discrimination on the grounds of nationality. Discuss how this principle is implemented in any one regional economic grouping.
3. How successful has UNCTAD been in coping with the economic and institutional problems that prompted its creation.
4. The Generalized System of Preferences (GSP) which was introduced in 1971 under the auspices of UNCTAD had as its main aim the provision of export earnings to developing countries through manufactured goods as an alternative to total reliance on primary agricultural and industrial raw materials. How successful has this scheme been?

SECTION B

5. The Republic of GUNZA, an important oil producing country under the leadership of a staunch socialist President has decided to re-assert its sovereignty over its natural resources. The President of the Republic, comrade AMANDA announced in his new year speech, the nationalization of the two main oil drilling companies both of which are American. You are the lawyer representing the government of GUNZA in the subsequent negotiations with the two companies. What measures would you recommend that the government of GUNZA takes or observes in order for the nationalizations to conform to international law requirements?
6. Discuss the possible methods available for the settlement of investment disputes. Which of the methods you discuss do you consider the most efficacious and why? What improvements could be made?
7. Outline the existing law regarding protection of foreign investors in Zambia, and comment upon its adequacy.
8. Discuss the role that the World Bank (I.B.R.D.) and the International Monetary Fund (I.M.F.) play in the provision of development capital to the less developed countries.

---

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - JUNE 1981

L 480

LABOUR LAW

TIME: THREE HOURS. (Plus 15 minutes to read the question paper).

ANSWER: FOUR questions in all. Question No. 2 is compulsory. Candidates are free to bring into the examination room copies of the relevant statutes and the Constitution of Zambia so long as these are not annotated in any way.

---

1. (a) Discuss the binding nature of a collective agreement under  
Zambian labour law.
  
- (b) The Windowknockers-makers' association and the trade  
union representing the workers employed in the industry  
have reached an agreement for an increase in the wages of  
the workers amounting to K5.00 a week. Brown is an  
employer member of the association whereas Tembo, another  
employer in the same industry and a friend to Brown, is a  
non-member of the association and he refuses to implement  
the wage increase in relation to his employees.  
Examine the rights and obligations of :
  - (a) Brown
  - (b) Tembo
  - (c) the association vis-à-vis  
both Brown and Tembo.



2. ZAMTAXIS Line Ltd. is a company dealing in car assembling in Mongu. It is 51% owned by ZANDECO Holdings Ltd. and 49% owned by PEART Motor Co. Ltd, a privately-owned company. Zandeco is a wholly-owned parastatal company. Zamtaxis employs 500 assembly-line workers. A Collective Agreement was negotiated and notified by the Minister of Labour and Social Services in January 1975. This agreement provided for a basic wage of K80.00 per month for the assembly-line workers. Provision was also made for re-negotiation of the Agreement at any time after 12 months from January 1975 as long as either party gave one month's notice.

In February 1977 the Branch Chairman of NUTA, a union representing workers in this industry, Mr. Chiti, gives one **month's** notice of the Union's intention to re-negotiate the agreement. The company authorises its Personnel Manager, Mr. Zulu, an ex-General Secretary of a National Union, to negotiate on behalf of the company.

Informal negotiations then followed between Mr. Chiti and Mr. Zulu. Mr. Chiti asks for an immediate 20% increase in wages due to the rise in the cost of living since January 1975 which official statistics have shown to be at the rate of 15% per year. But the government guideline for wage increases remains at 5% as it is intended to halt the rise in cost of living that may result from excessive wage increases. In the meantime prices have been rising much faster than the government had hoped. Due to these factors Mr. Chiti proposes that re-negotiations take place again after 12 months.

Mr. Zulu turns down Mr. Chiti's proposals and says that car sales by the company have drastically fallen and, in fact, that the company is threatened with closure for want of profitability. Mr. Zulu states further that in order to minimise costs the company is to increase automation and reduce the workforce by 50% on the basis of first-in-last-out, "and unless this is done the factory will close and all jobs <sup>will be</sup> lost." Mr. Chiti, for the

Question No. 2 continued.

union rejects this and insists on his proposals with the retention of all workers. He promises increased productivity by all workers and suggests that operational costs to the company can be reduced not by redundancies but by cutting down on the privileges of executives such as free cars, housing and servants and also by effecting a 30% cut down in management staff. He then argues that it is government policy and in the national interest to create more jobs and not to reduce them. The workers threaten to down tools unless Mr. Chiti's proposals are implemented.

At this juncture the parties agree to see the local Labour Officer, Mr. Mbezuma, in person and tell him about the existence of a Collective Dispute. Mr. Mbezuma then approaches the Labour Commissioner, Mr. Banda, who in turn telephones the Minister, Mr. Bonzo. In the meantime, Mr. Mbezuma holds a meeting with the two parties in order to mediate the dispute.

Analyse both the substantive and the procedural legality of the above matter under the Industrial Relations Act.

3. (a) Discuss the sources of law to be applied by the Zambian Industrial Relations Court.
- (b) Simbi was employed as a mechanic in accordance with the provisions of the Employment Act, Cap. 512. One day, a dispute between him and his employer UBZ Ltd. arose over the expressed desire of Simbi to join a trade union representing other mechanics in the industry - a move which is prohibited under Simbi's contract of employment. Simbi now seeks your advice as to <sup>in</sup> which of the two courts he should lodge his complaint:
  - (a) the High Court or
  - (b) the Industrial Relations Court.

4. L 480 LABOUR LAW

4. Explain the significance of the following concepts in Anglo-Zambian labour law and labour relations:

(a) the Benthamist philosophy vis-a-vis the individual contract of employment; and

(b) the abstentionist theory.

5. Payment of wages in a Zambian employment situation is a matter which is beyond the achievement of mere 'consensus ad idem' between the employer and the employee.

Discuss.

6. Mr. Mbao has worked in the public service of the Republic of Zambia for 15 years as Permanent Secretary, Cabinet Office. Six months ago he received a letter from the Secretary to the Cabinet informing him that His Excellency the President had appointed him Deputy Ambassador to the Republic of Zaire. This appointment was later confirmed by the Permanent Secretary, Ministry of Foreign Affairs who also wrote to Mr. Mbao enclosing a brochure of Foreign Service Regulations of the Republic of Zambia. Recently, a Commission of Inquiry appointed by the Minister of Home Affairs with Presidential approval has revealed that Mr. Mbao is not a truly committed Party militant and is otherwise capable of working against the Party and the Government. On the strength of this report, the President decides to dismiss Mr. Mbao from both foreign and public services of the Republic of Zambia.

Mr. Mbao now seeks your advice on whether (1) the President has power to dismiss him summarily; and (2) Mr. Mbao can sue the State, whose officials he alleges to have violated both Foreign and Public Service Regulations relating to dismissal of civil servants of his standing.

---

END OF EXAMINATION.