

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2013/2014 EXAMINATIONS

1. L 232 Law of tort
- 2 .L 282 Administrative law
3. L 482 Alternative dispute resolution
- 4 . LPR 3125 Media law
- 5 .LPR 4085 Intellectual property law
- 6 . LPU 2911 Legal process
- 7 .LPU 2951 Constitutional law
- 8 . LPU 3911 Law of evidence
9. LPU 3975 Human rights law
10. LPU 4041 International law

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The University of Zambia

School of Law

2012/2013

Second Semester Deferred/Supplementary Examination

L232 Law of Torts

INSTRUCTIONS:

- **TIME: THREE (3) HOURS (PLUS FIVE (5) MINUTES TO READ THE PAPER)**
 - **NO STATUTES ALLOWED IN THE EXAMINATION ROOM**
 - **ANSWER FOUR QUESTIONS, ONE FROM EACH PART. PART A IS COMPULSORY**
-

Part A

Question One

- (a) Made-by-Fwebene Company Limited operates a factory in Matero where it manufactures highly dangerous chemicals. One evening, the factory's safety system which was set up by an independent contractor, One-Man Engineer, breaks down unexpectedly. Highly toxic fumes escape from the factory and cause serious injury to Mulenga, who lives on a neighbouring plot and Abena Mike who is of no fixed abode, but loiters around in the area near the factory. Advise all the parties of any legal remedies that may be available to them, citing applicable legal authorities. (15 marks)
- (b) It is a matter of course that once a Plaintiff successfully proves that a tort has been committed against them, damages are inevitable. Critically discuss what "damages" are in relation to tortious liability, clearly outlining the types of damages that are usually awarded in the *Zambian courts*. (10 marks)
-

Part B

Question Two

- (a) Compare and contrast: (7 marks)
- (i) Public and private nuisance
 - (ii) Malicious falsehood and malicious prosecution
- (b) Happy Nsansa and his friend Mulamu are passing time at a roadside pub in Kabwata. Princess, accompanied by her 10 year old daughter, Keesha are walking along the nearby road when Mulamu starts hurling obscenities and brandishing an empty Mosi bottle at them. Mulamu is unable to cross the road to where Princess and Keesha are because of heavy traffic, so he continues calling after Princess, shouting that she is a "woman of loose morals" and further that the child that Princess has is a "bastard", when in fact not. Incidentally, Princess is heading to meet Handsome, a man she has recently 'met' on social media. Handsome witnesses all this and before Princess can explain anything, Handsome says he is no longer interested in the relationship. Discuss any tortious claim that may arise. (8 marks)

Question Three

- (a) Discuss the possibility of personal injury damages being recoverable in a private nuisance action. (7 marks)
 - (b) “The confused state of the defence of *volenti non injuria* is ‘partly due to a considerable overlap with other conceptual techniques employed to limit or reduce a defendant’s liability.’” Discuss, this statement, giving reasons for agreeing or disagreeing. (8 marks)
-

Part C

Question Four

- (a) What is vicarious liability? (5 marks)
- (b) Douglas is a petrol tanker driver for UNZA Distributors Limited. He has been employed under a contract of service for 10 years. Douglas is under strict instruction not to offer any lifts to any passengers. In breach of this instruction, he takes a woman on the tanker and just before he can drop her off at her destination, the tanker rolls off the road, destroying Great East Road Lodge and leaving the woman scarred for life. Advise UNZA Distributors Limited on their liability. (10 marks)

Question Five

- (a) Explain the Rule in *Rylands v. Fletcher*. (5 marks)
 - (b) Who is an “occupier” and what is “Occupiers’ liability”? (5 marks)
 - (c) Discuss the elements of false imprisonment in relation to the constitutional guarantee of personal liberty. (5 marks)
-

Part D

Question Six

- (a) Discuss the scope and application of the defence of *ex turpi causa non oritur actio* (5 marks)
- (b) Peter is crossing a pedestrian crossing when he is struck by a car driven by Mary. Peter is knocked to the ground and staggers to his feet, confused and before he realises it, he is hit by another car driven by Mulenga and he falls down again. While Peter is on the ground, Kaponya comes along, kicks Peter and makes away

with KR2, 000 from Peter's wallet, money belonging to Peter's employer. Peter spends three months in ICU at the UNZA mini hospital. Doctors are unable to say with precision which of the two cars caused his injuries. Advise Peter and his employers, if they have any remedy against Mary and /or Mulenga. (15 marks)

Question Seven

In the past few days, UNZA TV has been broadcasting a documentary about financial problems that most students face at the university. The documentary has shown a number of students idling around The Monk Square, one of whom was Nash. The commentary on the documentary read: "Young students, often intelligent, poor, vulnerable, dejected and homeless, always abandon school prematurely." The documentary continued to say: "Even worse is the plight of Wile, 21 years old and unable to afford even a bun." The documentary shows Wile standing at a grocery within the University. In actual fact, Nash and Wile were unaware that the UNZA TV crew was filming them. The two are actually sponsored by TESCO, a well established retail company. Clearly embarrassed by the documentary which was broadcast within Lusaka, Wile and Nash now come to you for legal advice.

- (a) Explain Wile and Nash's legal rights. (8 marks)
 - (b) What is the likelihood of Wile and Nash succeeding with court action in enforcing their rights alluded to in (a) above? (7 marks)
-

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER SUPPLEMENTARY EXAMINATION- OCTOBER 2013

L282- ADMINISTRATIVE LAW

TIME ALLOWED: THREE HOURS (3 Hrs)

INSTRUCTIONS:

1. This examination has FOUR sections, A-D.
2. Answer the question in section A, and answer ONLY one question in sections B, C, and D.
3. All Questions carry equal marks
4. Credit will be given for clear and logical answers
5. Wherever possible, support your answers with reference to decided cases and relevant legislation.

SECTION A

QUESTION 1

Judicial review provides challenges and opportunities to those who seek it to pursue justice and the rule of law.

In the context of the law and practice of judicial review in Zambia, explain the procedural challenges and opportunities available to an applicant. (20 Marks)

SECTION B

QUESTION 2

- a) Your friend is a Second year student of Political science in the School of Humanities and Social Sciences. He wants to know from you the difference, if any, between Constitutional and Administrative Law.

Explain to your friend.

(8 Marks)

- b) Petauke District Council has supported an application for a farm Plot by Mabvuto, a close friend of the Chairman of the Council. Under the existing regulations governing alienation of customary land, an application for title should be accompanied by a letter of support from the Chief. Mabvuto could not approach his chief because the current chief and Mabvuto's father were rivalries to the throne. The Chief has made it clear that Mabvuto's family should relocate from his kingdom and find land elsewhere.

You are the Commissioner of Lands, and Mabvuto's application is before you, will you sanction the grant of title? Give your reasons. (12 Marks)

QUESTION 3

- a) *Delegatus non potest delegare* is a well known principle of law. What does it stand for and briefly explain its significance to administrative law.

(8 Marks)

b) Section 2(2) of Industrial and Labour relations Act provide that “the Minister may, after consultation with the Tripartite Consultative Council, by statutory instrument, and subject to such conditions as he may prescribe, exempt any person or any trade, industry or undertaking from all or any of the provisions of this Act or any regulations or order made, or any direction given in pursuance of this Act”. Employers at the new Lusaka South Economic Zone have asked to be declared a union free economic Zone, meaning operating without recognizing unions. Fearing capital flight, and respecting government policy of job creation, the Minister of Labour has issued a statutory instrument declaring Lusaka south Economic Zone union free. This was done without any consultations with the Zambia Federation of Employers and the Trade Union Federations in the Country. The Employers and the Trade unions have formed a joint Committee to challenge the legality of the statutory instrument. You are a member of the Committee. On what principles of administrative law would you advise the Committee to challenge the minister’s exercise of his powers?

(12 Marks)

SECTION C

QUESTION 4

- a) Mention four ways through which administrative powers may be controlled other than through the courts of law. (8 Marks)
- b) The essence of the Ombudsman’s technique is to receive the complaint informally, to enter the government department, to speak to the officials and read the files and to find out exactly who did what and why. An Ombudsman has no legal powers except powers of inquiry. Given this description, why is the institution of Ombudsman still popular in many jurisdictions, including Zambia? (12 Marks)

QUESTION 5

- a) The doctrine of *ultra vires* is the basis upon which courts give themselves powers to review decisions of administrators.

Explain the above statement.

(8 Marks)

- b) In *Godfrey Miyanda v Mathew Chaila* (Judge of the High Court), 1985 ZLR 193, the court declined to declare wrongful the delay by a High Court Judge to prepare and deliver a judgment on grounds of public policy. Strictly, *Miyanda v Chaila* involved a resolution of two competing principles of public policy. Identify these and explain why the court may have decided to sacrifice one over the other.

(12 Marks)

SECTION D

QUESTION 6

- a) Prohibition is a less used public law remedy than certiorari. Do you have any reasons to explain why this is so?
- (8 Marks)
- b) Chipili is the new Registrar of Lands and Deeds. He had previously worked with your law firm before you joined. He left your firm after a bitter dispute with the partners. On leaving the firm, he vowed to do everything in his powers to frustrate the work of anybody associated with your firm. Your client has taken a loan secured by a mortgage of his supermarket building, but the bank will not advance the money until the mortgage is registered. Several visits to the Lands registry have yielded no positive response. The officers keep telling you that your papers are still in Mr Chipili's office. The Client is agitated and is accusing you of negligence and incompetence. A Secretary at your office, who has been with your firm much longer, has now confided in you why Mr Chipili, the new Registrar, is behaving in that way. You have decided to take legal action, what public remedy are you likely to demand. Explain your choice.
- (12 Marks)

QUESTION 7

- a) What is meant by the expression "exclusion of judicial review"? And what are the techniques used for this purpose?
- (8 Marks)

b) The Director of Forestry in the Ministry of Environment and Natural Resources entered into a contract with Huajiang Limited, a Chinese construction firm for the building of 10 houses for Forest Rangers in Masese Forest in Mwandia District. The houses have been completed, but owing to underfunding from the government, the Department of Forestry is unable to discharge its obligation to Huajiang Limited. Pencil Banda is the Director of Forestry and had personally signed the contract with Huajiang limited.

Can Mr. Banda be sued for the Department's failure to pay Huajiang Limited? Who else may be sued by the contractor in this case. Give statutory authority for your answer. (12 Marks)

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**ALTERNATIVE DISPUTE RESOLUTION(L482)
EXAMINATION**

OCTOBER 2013

INSTRUCTIONS:

1. Section A: **Question One** in Section A is **compulsory**.
2. Sections B, C and D: Answer **one** question from each of these sections.
3. Time Allowed: **Three (3) hours plus five (5) minutes** for reading through the examination paper.
4. This examination paper carries a total of **70 marks**.
5. Candidates are **not permitted to bring any statutes** into the examination room.
6. Candidates must **not turn this page** until the invigilator tells them to do so.

SECTION A

Question 1 - Compulsory

Luyando is a business lady who runs an interior designing company. As an interior designer, part of her work involves taking clients to stores and helping them select their furniture and home décor. Luyando has taken more than fifty clients to 'Beyond Beautiful Homes' (BBH), a furnishing company that has excellent customer service and after-sales care. In March 2013, Luyando introduced herself to the Manager of BBH and entered into an oral agreement with him providing that for every new client that she will bring to BBH and who purchases goods worth K10,000 or more, the client will get a 7% discount and BBH will credit Luyando with 3% of the client's total expenditure. Luyando's credit was recorded in a small book in the manager's office, and she was entitled to spend it in BBH within a year. Between March and July 2013, Luyando accumulated credit worth K50, 000. In September 2013, Luyando decided to have a home make-over and went to BBH and selected furniture and fittings worth K45, 900. When it was time to pay, Luyando asked the cashier to deduct the due payment from her credit. To her surprise, Luyando found that BBH had a new manager; and he refused to honour the credit, saying although he saw the small book, there was nothing officially written proving the existence of such an agreement.

1.1 Luyando has decided to bring the dispute between her and BBH for arbitration. Advise Luyando on whether or not this matter can be arbitrated upon. (6 marks)

1.2 Assume that the matter can be arbitrated upon. Timothy is a sole arbitrator; and he is Luyando's close friend. Can Timothy hear this matter? Substantiate. (4 marks)

1.3 Assume that the matter comes before three independent arbitrators. One of them lives in Livingstone, and has to fly in and out of Lusaka for the three hearings. Each one way ticket costs K300. The three hearings took place in two different venues: the first was at one arbitrator's office and he did not charge the parties for it. The last two hearings were held at Pamodzi Hotel, where the conference room used cost K500 per hour. On the second day of the hearings, the proceedings took five (5) hours; and on the last day, they took

eight (8) hours. Draft an arbitral award and set out the reasons for your award.
(12 marks)
(22 marks)

SECTION B

Question 2

2.1 King and Wood Mallesons report that:

‘In many countries, the New York Convention is effectively the country's law on the recognition and enforcement of international arbitral awards. However, a state may also have, alongside the New York Convention and any other relevant treaties to which it is a party, its own domestic laws governing the enforcement of international arbitral awards.’

What laws govern the enforcement of arbitral awards in Zambia and what do they provide with regard to enforcement? (8marks)

2.2 With reference to case law and legislation, write short notes in which you outline the historical development of mediation and arbitration in the judicial system of Zambia. (8 marks)

(16 marks)

Question 3

King and Wood Mallesons report that:

‘Unlike an appeal on the merits, an ‘action to set aside’ is designed to ensure that a state, through its courts, exercises a minimum level of control over the procedural and jurisdictional integrity of international arbitration taking place within its territory.’

In light of the concept of voluntariness in ADR mechanisms, write an essay in which you comment on the above extract. (16 marks)

SECTION C

Question 4

With reference to case law and legislation, outline the historical development of mediation and arbitration in the judicial system of Zambia. **(16 marks)**

Question 5

With reference to the relevant provisions in the Arbitration Act, write short notes on:

- 5.1 The commencement of arbitral proceedings. **(2 marks)**
- 5.2 The nationality of an arbitrator. **(3 marks)**
- 5.3 The fair treatment of parties during arbitral proceedings. **(3 marks)**
- 5.4 The power of an arbitral tribunal to order interim measures. **(4 marks)**
- 5.5 The place of arbitral hearings. **(4 marks)**

(16 marks)

SECTION D

Question 6

Compare and contrast court annexed mediation and litigation. **(16 marks)**

Question 7

With reference to the ZCDR Rules and the Arbitration Act, write short notes on the:

- 7.1 Preliminary meeting. **(8 marks)**
- 7.2 Procedure and conduct of a hearing. **(8 marks)**

(16 marks)

THE END.



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**MEDICAL LAW- LPR 3125
FINAL EXAMINATION
Friday 7th March 2014**

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each Part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates **are permitted to bring the following statutes** into the examination room:
 5. Public Health Act Chapter 295 of the Laws of Zambia
 6. Medical Aid Societies and Nursing Homes Chapter 317 of the Laws of Zambia
 7. Health Professional Act Chapter 297 of the Laws of Zambia
 8. Health Professional (Appeal) Rules and Disciplinary Proceedings Rules Chapter 297 of the Laws of Zambia
 9. Nurses and Midwives Act, Chapter 300 of the Laws of Zambia
 10. Mental Disorders Act Chapter 305 of the Laws of Zambia
 11. Persons with Disabilities Act Chapter 65 of the Laws of Zambia
 12. The Human Tissue Act Chapter 306 of the Laws of Zambia
 13. Termination of Pregnancy Act
 14. The National Health Research Act, 2013

Candidates must **not turn this page** until the invigilator tells them to do so.

SECTION A: Answer the compulsory question

QUESTION ONE

Allye was born on 14th February 1991 in a small village in Tonga Land. On 21st June 1993 Allye and the family visited a farm for a short holiday. While being pushed in his pram on the rough terrain of the farm, Allye bounced forward and bumped his face and head against the steel frame of the pram. He suffered bruises to his face and forehead. His parents took him to the nearest clinic about 5kms from the farm. An x-ray revealed no fracture but he had blood stained fluid coming from the right nostril. The medical officer on duty suggested that Allye be transferred to Hope Hospital in a Town nearby.

At the hospital he was examined by Doctor Rose and sent to the neuro-surgical unit where he was admitted overnight for observation. The next day 22nd June the Doctors at the unit thought that he could be discharged but at about midday it was noted that he had a 'slight leak from his nose' which tested positive for glucose, suggesting that the fluid was CSF (CEREBRO-SPINAL FLUID). The doctors decided to keep him overnight in hospital and to put him on antibiotics with the expectation that the leak would seal itself.

The following day, 23rd June 1993, it was established that the leak had stopped and Allye was discharged. On his file there was a record stating that Allye's parents, Mr and Mrs Vegies were told before discharge at about 11:30 am that they 'should return to the hospital if there were any problems'. They were also told that Allye would be seen in the neuro-surgical out-patient unit in due course. Allye was discharged and taken home by his parents. An appointment was subsequently made for 5th October 1993 at the clinic of Mr Cowie, a consultant neuro-surgeon at Hope Hospital.

The notes on Allye's file made on 1st July 1993 show that Allye had been: "Admitted to Hope Hospital 21/6/93 with head injury+cfs leak. Discharged 23/6/93 flucloxacillin 125 4 times a day.

Mr Cowie had prepared a discharge summary indicating what had happened and that he would make arrangements to review Allye at his out-patient clinic.

On Sunday 29th August Allye's parents contacted their own General Practitioner (Doctor LOKE) and asked if he could come to their home and see Allye because his nose was running and they were very worried about the discharge and that it might be related to his head injury.

Doctor Loke attended to him and the notes from his visit was: “nose runny today-Dad worries it might be CFS again, O/E well alert, PERL [pupils equal and reacting to light], ears NAD, nose snuffly, reassured.”

No treatment was given and Allye was not referred back to the hospital. Dr Loke did not see Allye again.

Mr and Mrs Vegies noticed that the leak continued and as a result did see another GP, Dr Malik on 30th September 1993 and once again they were reassured that he was suffering from a cough and cold.

Five days later at the neuro-surgical unit Doctor Rose noted clear fluid was dribbling from Allye’s right nostril and that it tested positive for glucose. Doctor Rose wrote on Allye’s file:

“This child is continuing to leak glucose positive fluid from the right nostril. It is clear, I think that he is going to be worked up to undergo an antero cranial fossa repair to stop this fistula so that the risk of meningitis is abolished. When we had him over his mother’s knee at the clinic this afternoon I was able to see clear fluid dribble and this is very definitely glucose-positive. I will arrange his admission as soon as possible.”

On 13th October 1993 arrangements were made for Allye to undergo a cisternogram with a view to surgery taking place two days later on 15th October 1993. No criticism was made about this time scale. Unfortunately Allye contracted an infection between 5th and 13th October 1993 which developed into pneumococcal meningitis. He was admitted on 12th October 1993 to the intensive care unit of Central Hospital, where he was treated with intravenous antibiotics. It was not until 5th November 1993 that Allye was well enough to undergo an operation to repair what were discovered to be two small defects in the anterior cranial fossa behind the nose. No actual fracture was ever found. The operation was successful in sealing the defects but Allye was left with significant brain damage and epilepsy as a consequence of the meningitis.

Mr and Mrs Vegies want to commence an action against the doctors and the hospital authorities for medical negligence. Argue the case on their behalf.

[Marks: 18]

SECTION B: Answer one question from this section

QUESTION TWO

In Zambia the new Health Research Act prohibits reproductive cloning of human beings and prohibits the removal of tissue, organs, blood, blood products or gametes from living persons for research purposes.

Explain the provisions of the law in relation to the arguments that research in the medical field is necessary to improve the health of human beings and the law should permit the advancement of research on human subjects.

[Marks: 14]

QUESTION THREE

Reproductive rights, the foundation for women's self-determination over their bodies and sexual lives, are critical to women's equality. We believe laws and policies that protect and advance these rights are essential, and there is no legal decision more fundamental to protecting a woman's reproductive freedom than *Roe v. Wade*, the landmark 1973 case that legalized abortion in the U.S.

Explain how the case of *Roe v. Wade* would be applied in the 21st century by the courts of law in Zambia on a persuasive basis regarding human rights issues.

[Marks:14]

SECTION C: Answer one question from this section

QUESTION FOUR

Does the current law in Zambia on children's consent to medical treatment adequately protect their rights?

Answer the above question with reference to case law

[Marks: 14]

QUESTION FIVE

Doctor No Good is a passionate supporter of the right to die. His patient Dolly is aged 74 years and has been suffering for a terminal illness. She is unable to move and is in constant pain. Simple tasks such as lifting a spoon to feed herself is very difficult for Dolly. She asks Doctor No Good to give her something that would make the pain stop forever. Doctor No

Good really feels sorry for his patient and gives her a lethal dose of painkillers. Fifteen minutes after the injection Dolly goes into a fit and the entire hospital hears her screaming. One hour later she dies.

Explain Doctor No Goods action with regards euthanasia. Your answer should take into account the argument that euthanasia will continue to take place, even though it's illegal, it would surely be better to make it legal and regulate it so as to minimize abuse in Zambia.

[Marks:14]

SECTION D: Answer one question from this section

QUESTION SIX

In the case of *Re T A C P 609 So 2d 588* (Fla, 1992), a case decided by the Supreme Court of Florida it was held:

“We acknowledge the possibility that some infants’ lives might be saved by using organs from anencephalics who do not meet the traditional definition of ‘death’ we affirm to-day. But weighed against this is the utter lack of consensus, and the questions about the overall utility of such organ donations. The scales clearly tip in favour of not extending the common law in this instance.”

Explain the ethical debates that are created by organ donation by anencephalic children
[Marks: 14]

QUESTION SEVEN

Psychiatric treatment for patients suffering from mental illness has and continues to be a challenge in Zambia. There are very few conditions that justify compulsory treatment for such patients.

With reference to the national laws in Zambia and the international regulations outline the conditions that allow compulsory psychiatric treatment.

[Marks: 14]

[Total Marks: 60]

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

MID YEAR SESSIONAL EXAMINATIONS – MARCH 2014

2013 ACADEMIC YEAR

LPR 4085: INTELLECTUAL PROPERTY LAW

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

INSTRUCTIONS: NO STATUTES ALLOWED

ANSWER FOUR QUESTIONS. ONE QUESTION FROM EACH PART. PART ONE IS MANDATORY

PART A

1. (a) Fizzer Inc. (Fizzer) is a large United States Multinational Pharmaceutical Company. Over the years Fizzer has invented many pharmaceuticals of great use to human health, including most recently Tetracine™ and ANTIADIS™. Tetracine is a powerful antibiotic, with limited side effects. It immunizes most humans from the Aids Virus.

Fizzer has obtained patents on Tetracine and ANTIADIS in the United States and in every other country of the world where that is possible. In the new republic of Barotseland, however, there has been an express exclusion of pharmaceuticals from coverage under local patent laws. Barotseland is in the process of joining the World Trade Organization. More recently, acting under pressure from the Industrial World and anticipating the Intellectual Property requirements of TRIPS Agreement, Barotseland has allowed pharmaceutical patents. Fizzer acted quickly to register its Tetracine and ANTIADIS patents in Barotseland. However, the newly enacted Barotseland Patent Act has a provision on “Compulsory Licensing” of Patents that have not been ‘used’ in the country. The Barotse Authorities have informed Fizzer that since it has not established a local production facility (but instead chose to export ANTIADIS to Barotseland) it has not “used” its patent in conforming with the Barotseland Law. Barotseland authorities have also noted that there is a rapidly rising rate of Aids infections which constitute a public emergency in their opinion. The authorities therefore intend to compel licensing by Fizzer of its ANTIADIS patent to several local pharmaceutical firms.

Fizzer would like to know whether Barotseland can do that under the International Intellectual Property Regime and (if so) under what conditions and (if not) what remedies it may pursue.

Advise Fizzer.

[9 MARKS]

- (b) John Phiri is a third year student at the Zambezi Open University. You happen to meet him at UNZA’s Student Centre and he is impressed with your mastery of legal concepts especially in the field of Intellectual Property Law. John has told you that he has heard of neighbouring or related rights under copyrights law.

Explain to John what is meant by copyright, the criteria or main conditions of protection as a copyright and what is meant by neighbouring or related right, to whom these rights are granted and the rational for granting these rights.

[9 MARKS]

PART B

2. You are a research assistant to Professor Mambede. Professor Mambede is writing a case book on Intellectual Property Law. Professor Mambede has requested you to contribute a section in his book entitled 'Introduction to Patents'.

Professor Mambede wants the section to clearly define or describe what patents are, the rights granted by a patent, the common criteria in most jurisdictions for patentability, ownership and defences to infringement of patents.

Proceed.

[14 MARKS]

3. (a) One means for accomplishing economic development through transfer of technology is the commercial transfer and acquisition of technology.

Discuss the ways or mechanisms in which technology transfer across national border is achieved.

[8 MARKS]

- (b) Discuss the Supreme Court of Zambia decision in Trade Kings Limited V Unilever PLC Cheesebrough Ponds (Zambia) Limited, Lever Brothers (Private) Limited and Lever Brothers Zambia Limited – SCZ JUDGMENT No. 2 OF 2000

[6 MARKS]

PART C

4. The 1994 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), one of the main outcomes of the Uruguay Round (1986 – 1994) of Multilateral Trade negotiations which is administered by the World Trade Organization (WTO) establishes enforceable global minimum (and high) standards of protection and enforcement for virtually all the most important intellectual property rights.

Developing country representatives continue to express concern that TRIPS raises the prices of drugs and education materials in poor countries, legitimizes the 'biopiracy' of genetic resources and knowledge and blocks the transfer of much needed technologies.

Critically discuss the above statement. In your discussion apart from addressing the issues raised you should bring out the core principles under the TRIPS Agreement and how the TRIPS Agreement can be reviewed to take into account the interests of developing countries.

[14 MARKS]

5. (a) Trademarks and related aspects of trading goodwill (get up, trade names of businesses, e.t.c) are protected as symbols needed by consumers to distinguish between competing products and services in a market economy.

With the aid of case law discuss the requirements which a sign must in general fulfil in order to serve as a trademark. **[9 MARKS]**

(b) Discuss the Supreme Court of Zambia decision in DH Brother Industries (PTY) Ltd V Olivine Industries (PTY) Ltd – SCZ JUDGMENT No. 10 of 2012

[5 MARKS]

PART D

6. (a) With the aid of case law discuss the elements which a Plaintiff must show in order to make a case for passing off. **[5 Marks]**

(b) Write short notes on the following;

- (i) Grey market
- (ii) Petty Patents
- (iii) Sources of Intellectual Property Law

[9 Marks]

7. (a) You are the Legal Advisor to the Prime Minister of the newly independent Republic of Zambezia.

Following Zambezia's break away from the Republic of Eurasia and its subsequent international recognition as a sovereign independent state, the state of Zambezia has been involved in International Trade and Investment.

Some investors and traders (both local and international) have raised concerns at the level and scale of infringement of Intellectual property rights in the new Zambezia state.

This morning the Prime Minister has approached you for your opinion on the remedies available to investors and Traders in general for infringement of Intellectual Property rights.

Advise him.

[9 MARKS]

(b) Discuss the Justification for Protection of Traditional Knowledge

[5 MARKS]

END OF EXAM



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

LEGAL PROCESS LPU2911
2013 MID YEAR EXAMINATION

7th March 2014

INSTRUCTIONS

1. Answer **four (4) questions**, one from each part.
2. Time allowed: **three (3) hours** plus **five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates are permitted to bring the **Interpretation and General Provisions Act, Cap 2 of the Laws of Zambia**.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question 1

You have been invited to make a presentation at Commonwealth Judges' colloquium being held in Livingstone. Your presentation should discuss doctrines and principles that the law puts in place to enhance finality in litigation and certainty of law. Write your presentation. **(18 Marks)**

PART B

Question 2 – Refer to excerpt of relevant statute attached to the question paper.

Jane Muzungu comes to you for advice. She recently graduated from the University of London with a bachelor of laws (LL.B) degree. She wants to know if she qualifies, under the provisions of section 11(1) of the Legal Practitioners' (Amendment) Act, No.17 of 2009, to enrol for the legal practitioners' qualification course offered by the Zambia Institute of Advanced Legal Studies (ZIALE).

Advise Jane.

(14 Marks)

Question 3

Write a reasoned opinion on the accurateness of the following statement:

“...since the applicant's case has not come to [the High] court by way of appeal or order of transfer, and the fact that the parties in this case were married under customary law and their marriage was dissolved in a local court, this court has no jurisdiction over these proceedings since the law applicable in this court is the English divorce law and not the customary law of the parties in this case.”

Per Kabalata J in *Ann P. Nkhoma v Smart Nkhoma* (2003) Z.R. 146

(14 marks)

PART C

Question 4

Section 33 of Education Act, Cap 134 of the laws of Zambia provides:

- (1) Any person who is guilty of an offence under the provisions of this Act shall be liable, on conviction, to a fine not exceeding three thousand penalty units or to imprisonment for a period not exceeding one year, or to both.
- (2) Regulations made under this Act may prescribe penalties for contraventions of the regulations, not exceeding the penalties mentioned in subsection (1).

On 20th January 2014 the Minister of Education published a statutory instrument, Education (Language Regulations) Lusaka Order which prescribed the language of instruction for all primary schools in Lusaka as Chewa. The Statutory instrument is enacted pursuant to the powers of the minister to make regulations under the Education Act, Cap 134 of the Laws of Zambia. In addition to prescribing the language of instruction, the statutory instrument makes it an offence, under regulation 3(1) to contravene its provisions. It states that 'any person who is liable to an offence under regulation 3(1) of the Order shall be sentenced to imprisonment for a period 3 years.'

This situation has made teachers angry and they have since gone on strike.

The chairperson of the Lusaka Teachers Union comes to you as legal practitioner with experience in such matters. **He seeks your advice on whether the statutory instrument can be enforced against his members. Advise him. (14 marks)**

PART C

Question 4

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This situation has made teachers angry and they have since gone on strike.

The chairperson of the Lusaka Teachers Union comes to you as legal practitioner with experience in such matters. **He seeks your advice on whether the statutory instrument can be enforced against his members. Advise him. (14 marks)**

Question 5

You have been visited by Joan Pepe, who shows you a judgment against her which she has just received from the High Court in Ndola. She says that she was sued by her bankers Chikwama Bank for possession of her house after she failed to make her mortgage payments of K235, 000.00. The High Court has ordered the bank to possess and sell the house to recover the outstanding amount if Joan does not liquidate the debt within 30 days from the date of judgment. Joan also shows you another judgment dated 20th November 2013 delivered by the High Court in Lusaka. In that judgment, you notice that the court refused to grant an order for possession and sale of a residential property but ordered payment in instalments so as to protect the debtor from losing his home.

Joan says the lawyer who presented her in the High Court in Ndola had submitted the judgement by the Lusaka High Court in his submissions to court. She further says that she is surprised that the court gave an order to sell her residential property notwithstanding that her case was so similar to the one decided by the High Court in Lusaka.

Joan wants to appeal against the judgment of the High court. She seeks your opinion on the prospects of the appeal. Advise her. (14 Marks)

PART D

Question 6

Discuss customary law as a source of law in Zambia. (14 Marks)

Question 7

Discuss the extent to which the rules of statutory interpretation can be applied to constitutional provisions highlighting the special place of the constitution as a source of law. (14 Marks)

End of examination

GOVERNMENT OF ZAMBIA

ACT

No. 17 of 2009

Date of Assent: 28th August, 2009

An Act to amend the Legal Practitioners Act.

[31st August, 2009

ENACTED by the Parliament of Zambia	Enactment
1. This Act may be cited as the Legal Practitioners (Amendment) Act, 2009, and shall be read as one with the Legal Practitioners Act, in this Act referred to as the principal Act.	Short title Cap. 30
2. The principal Act is amended by the repeal of section <i>eleven</i> and the substitution therefor of the following new section:	Repeal and replacement of section 11
11. (1) Subject to subsection (1) of section <i>thirteen</i> , a person may be admitted as a practitioner if that person--	Professional and academic qualifications Act No. 11 of 1999
(a) is a holder of a degree in law obtained from a public university established under the University Act, 1999, and whose programme has been accredited by the Council of the Zambia Institute of Advanced Legal Education; or	
(b) is a holder of a degree in law obtained from a private university registered in accordance with the provisions of the University Act, 1999, and whose programme has been accredited by the Council of the Zambia Institute of Advanced Legal Education;	Act No. 11 of 1999
or	

*Copies of this Act may be obtained from the Government Printer,
P.O. Box 30136, Lusaka Price K3000 each.*

Cap. 49

(c) is a holder of a degree in law obtained from a university outside Zambia in a country operating the Common Law system approved by the Council of the Zambia Institute of Advanced Legal Education and whose degree in law is recognised by a university accredited under the Zambia Institute of Advanced Legal Education Act as academically equivalent to a degree of that accredited university; and

(d) has—

(i) for one year, attended a course of post graduate study required by the Council of the Zambia Institute of Advanced Legal Education and provided by the Zambia Institute of Advanced Legal Education and has been duly certified as having fulfilled the requirements of such course by the Director of the Institute; or

(ii) after having obtained a degree, completed two years' service in Zambia as an articled clerk under articles of clerkship to a practitioner; and

(e) has passed the Legal Practitioners Qualifying Examination.

(2) Notwithstanding subsection (1), a person may be admitted as a practitioner if that person is a qualified lawyer, by whatever name called, and thereby has a right of audience before courts exercising original civil or criminal jurisdiction in a self-governing State which is, or was at any time, a Member State, or was part of a Member State, of the Commonwealth of Nations and which applies as its predominant basic system of law the Common Law or a legal system founded upon the Common Law and—

(a) that person—

(i) has been a practising lawyer of not less than three years' standing in the State in which the person is entitled to practice;

(ii) has been actively employed for not less than six months in Zambia —



UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
CONSTITUTIONAL LAW- LPU 2951
MID YEAR EXAMINATIONS

3RD MARCH 2014

INSTRUCTIONS:

1. Answer **FOUR (4) questions**, one from each part.
2. Time Allowed: Three (3) hours plus **five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates are permitted to bring the following statutes into the examination room: Constitution of the Republic of Zambia, chapter 1 of the Laws of Zambia and the 1st Draft Constitution of 30th April 2012).
5. Candidates **must not turn this page** until the invigilator tells them to do so.

PART A

QUESTION 1

Mariah Petros is a Latin American law student with keen interest in constitutions of the world. She has been volunteering her services in different parts of Africa with the view of assisting African governments to adhere to the Constitution and nationals to demand adherence of their governments to their constitutions and to the principles of constitutionalism. She is planning on coming to work in Zambia. She writes to you, asking for your assessment of the key features of the Zambian constitution.

Write a well-reasoned opinion for Mariah.

(18 Marks)

PART B

QUESTION 2

A nearly exclusive reliance on elections heightens the sense of powerlessness of the many to act other than passively by reacting to choices formulated by others. Most citizens, at least those who even choose to vote, treat that act as meeting their full responsibility for participating in public affairs. Voting satisfies that responsibility in an undemanding and individualistic way without need for collegial discussion or group action.

HENRY STEINER: 'Political Participation as a Human Right' (1988) 1 Human Rights Year Book 77 at 100.

Critically discuss the above statement by Henry Steiner.

(14 Marks)

QUESTION 3

Cora states that:

[L]aws and administrative decisions are regarded as the outcome of a process whereby decision-makers are lobbied by various interest groups in society, and then make decisions that 'aggregate citizen preferences.' Civic republicanism rejects the idea that politics should simply implement the wishes of citizens. It prefers a situation in which decision-makers stand back from the lobbying process and seek new information and different perspectives before making decisions. The republican approach encompasses four basic principles: deliberation, the equality of political actors, universalism and citizenship.

Critically discuss the above statement.

(14 Marks)

PART C

QUESTION 4

Milambo is studying Development Studies at the University of Zambia . He has just come back from visiting his sister in America where he believes everyone has their basic needs and poverty is not so evident. His sister attributed this to the fact that Americans enjoy their human rights. *Milambo* wants to understand whether the Zambian people have human rights and if so, why they don't enjoy them as much as the Americans do.

Write a well-reasoned opinion for Milambo.

(14 Marks)

QUESTION 5

You are a constitutional law student at the University of Zambia. The *University of Zambia Student Union* has asked you to explain why the current constitution-making process in Zambia seems to be failing.

Write a well-reasoned opinion for the Union.

(14 Marks)

PART D

QUESTION 6

Write short notes on the following:

- a) Constitutionalism
- b) Constitutionality of an Act of Parliament

(14 marks)

QUESTION 7

Write short notes on the following:

- a) Referendum
- b) Constituent Assembly

(14 Marks)

TOTAL MARKS FROM 4 QUESTIONS: 60

END OF EXAMINATION



The University of Zambia

School of Law

Law of Evidence – LPU 3911

2013/2014 Academic Year Mid-Year Examinations

3 March, 2014

Instructions

1. Answer four (4) questions, one from each part.
 2. Time allowed is three (3) hours plus five (5) minutes to read through the examination paper.
 3. The examination paper carries a total of 60 marks.
 4. Candidates are not permitted bring any statutes and or texts into the examination room.
 5. Candidates must not turn this page until the invigilator tells them to do so.
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PART A

Question One

James and Kelvin are tried together. James is charged with raping Lydia, a girl of 14 years and Kelvin is charged with indecently assaulting Maureen, a girl of 12 years. The offences were committed one evening when the two girls were walking home together and were offered a lift by two men in a car. Shortly after the offences took place Lydia was seen by a policeman. She was in a distressed state and in reply to the question 'What is the matter?' she told the policeman that she had been sexually assaulted. The policeman then asked her if she knew who had committed the offence and she said 'No, I could not really see because it was dark in the car'. Subsequently both girls picked out James and Kelvin at an identification parade.

At the trial in his evidence in chief, James denies that he has ever been in the same car as Kelvin, but under cross-examination he admits that he was in Kelvin's car on the day in question, but that they had used the car to go to an evening movie together and had never seen the girls. In his evidence in chief Kelvin states that James was responsible for both the offences, while he (Kelvin) had merely been an unwilling bystander.

You are a new team member of the Lusaka Province Prosecutions Department. Draft a legal opinion to your Officer-in-Charge advising her of the evidential difficulties your team is likely to face in trying to secure the conviction of James and Kelvin and how these difficulties would be overcome, if at all.

18 Marks

PART B

Question Two

Martin and Ruth lived together from 1982 until April, 1989. Through-out this period, they were known to those living in the area as Mr. and Mrs. Goodbody. In April 1989, Ruth left Martin and went to live with David. On 6 October 1989, Ruth gave birth to a fully

developed baby girl, Nicola. In 1998, Martin, who still lived in the same area, met and married Olga under statutory law.

Recently Martin has been visited by the Police and in January, 2014, he was charged with two offences of (i) bigamy in relation to his marriage to Olga; and (ii) incest with Nicola.

Martin states that he has indeed had sexual intercourse with Nicola. However, he is adamant that Nicola is not his daughter because, he claims, he and Ruth always used contraceptives. He adds that David must be the father of Nicole since Ruth and David were already having sexual intercourse even before she left him and during which time Nicola must have conceived.

As a new lawyer at a Lusaka based law firm that Martin has approached for his defence counsel, using appropriate legal authorities and on the basis only of the facts and evidence set out herein, draft a brief legal opinion to your principal, advising of the chances of success of Martin being acquitted of the charge proffered against him.

14 Marks

Question Three

James is on trial for the indecent assault of three boys; Ian, Steven and Clive, who are aged 8, 11 and 13. The three boys all give evidence at the trial that James, who was a leader at an annual scout camp, approached them in their tents in the early hours of the morning, suggested that they return to his tent for a cup of tea and when each went, he separately sexually assaulted them.

James denies these allegations and says that the boys were asked to come to his tent because they had been smoking in their tents. He alleges that they have colluded and made up their stories.

The prosecution also has evidence of three other scouts who allege that similar events took place at the previous summer camp, although James did not actually succeed in assaulting the two boys as they fought him off.

You are the prosecutor for the case. Because of the publicity the case has received, the Director of Public Prosecutions has instructed you to do a report to him stating how you will use the evidence set out in the facts herein to secure the conviction of James. Draft the report.

14 Marks

PART C

Question Four

Don and Ed are jointly charged with theft from Frank's house. Don has two previous convictions for assault occasioning actual bodily harm. Ed has recently been dismissed from his job because he had been suspected of tinkering with the clocking-in machine.

The police allege that Don made a confession after protracted questioning. Don denies this, saying that the police must be mistaken. In his evidence in chief, Don says that he has never previously been charged with any offence while Ed admits that he and Don had broken into Frank's house.

After an adjournment of the case, Don who is concerned that things are not going very well, approaches a law firm for which you are doing a vacation internship stint. Draft an appraisal of the evidential hurdles that Don has to overcome in order for him to be acquitted of the charge.

14 Marks

Question Five

Jim, Kennedy and Lameck are jointly charged with murdering a prostitute by beating her to death. Briefly consider the admissibility of psychiatric evidence on the following issues:

- (a) Jim pleads that he was provoked beyond endurance by her taunts about his lack of sexual prowess;
- (b) Kennedy pleads that he was suffering from diminished responsibility; and
- (c) Lameck pleads that he was examined while under the influence of alcohol and as such the evidence which tended to implicate him was unreliable.

14 Marks

PART D

Question Six

Evidence of character is a species for which similar facts evidence is a genus. Discuss.

14 Marks

Question Seven

Lord Sankey in his decision in the case of *Woolmington v DPP [1935] AC 462*, propounded the now famous statement to the effect that “Throughout the web of the English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt.”

Discuss.

14 Marks

End of Examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

HUMAN RIGHTS LAW – LPU 3975
MID YEAR EXAMINATION

5TH MARCH 2014

INSTRUCTIONS:

1. Answer **FOUR (4)** questions, one from each Part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates are **not permitted to bring any statutes** into the examination room.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question 1

Marques is a thirty one year old Congolese refugee living in a refugee camp in Zambia. His parents are political refugees who fled to Zambia in 1968. Marques was born and bred in the camp. Marques is a book worm – he reads anything and everything he finds. A few months ago, Marques came across a human rights textbook which said:

Human rights are rights that every human being has by virtue of his or her human dignity. They belong to every individual as a consequence of being human, independent of acts of law.

Marques is very interested in this and decides to read more and see if he as a refugee also has these so-called human rights. He discovers that there is a treaty popularly known as the 1951 UN Convention on the Status of Refugees which provides that refugees also have rights, including the freedom of movement. He also learns that Zambia has “ratified” but not “domesticated” the 1951 UN Convention. Further, it has entered a “reservation” on the provision guaranteeing refugees’ freedom of movement. Marques does not understand the significance of these three terms, but he is excited to know that he as a refugee is entitled to freedom of movement. Marques is particularly delighted because he wants to leave the camp and explore Zambia; learn a skill, get a job and marry one of the beautiful Zambian ladies.

As he reads further, Marques learns that there are “human rights”, “legal rights” and constitutional rights. At this point, Marques is confused and he wishes to know:

- Is freedom of movement a human right, legal right or constitutional right?
- How does each of these rights differ from the other?
- What do the terms “ratified”, “domesticated” and “reservation” have to do with this right?
- Does Marques have the freedom of movement as a human being in Zambia?

Advise Marques.

(18 marks)

PART B

Question 2

Namani and Puti are third year law students taking the Human Rights Course. One afternoon after class, while walking to Kafue Block Two, Namani laments:

“It is so sad that our judiciary does not protect people’s rights. The rights of politicians in particular are violated left, right and centre. When political figures come before the courts they do not receive justice. It’s almost like one is automatically guilty if he is in the opposition; and certainly innocent if he belongs to the ruling party.” Puti listens quietly, seeing where Namani is coming from, but not fully agreeing with him. After careful thought, Puti replies:

“While there may be instances when the courts rulings have been questionable, there are many cases in which the courts have actually protected people’s rights. Examples include the *Christine Mulundika* case, *Thomas Mumba* case and the and the *John Banda* case. In light of such evidence, I find it difficult to accept your proposition that our judiciary does not protect protect rights.”

“Puti, you are only saying that because your father is in the ruling government! To be honest with you, when I look at Zambia today, the NGOs are doing a far much better job of protecting people’s rights than the government, be it the judiciary, Parliament or Human Rights Commission. Sorry to say, but we need a change of government!”

“Hahaha Namani! That is so funny. Why do I think you are feeling disgruntled because your father was among those who were arrested over the Barotse cession? Don’t take these matters personally Namani, look at the issues objectively: Zambia’s judiciary, Parliament and Human Rights Commission are playing a positive and adequate role in protecting the rights of all Zambians.”

Write an essay in which you outline the role that ought to be played by each of the three organs and institution; and evaluate whether or not they are playing a positive and adequate role in protecting the rights of all Zambians.

(14 marks)

Question 3

Mr Mwila is a member of the People’s Voice Party (PVP), a new political party that intends to contest in the 2016 elections. He has been summoned to appear before the Internal Matters

Committee of PVP. He appears before the Committee and finds three members there waiting for him – Ms Linda Lamba, Mrs Joyce Hatembo and Mr Darius Chuulu.

Mr Chuulu: We are glad you have come. This Committee has a few matters it wishes to clarify with you. The reason why the Committee has summoned you is because you appeared on the 19:00 hours news last night, saying you will vote for Mrs Lizet Zimba for president, when the Party has not endorsed her candidature.

Mr Mwila: Yes sir, I did say that. Is that a problem? Do I not have the right to choose whom to vote for?

Ms Lamba: Unfortunately Sir, you are a fully paid up member of the PVP; and you signed the Constitution which provides that party members may only vote for the candidate whom this Committee has nominated as Party president. This Committee is yet to announce the name of the candidate who will represent the PVP in the next elections. What you did yesterday is therefore an offence that merits your expulsion from the party.

Mrs Hatembo: The only way in which you can save yourself from such expulsion Mr Mwila, is if you go back on air and retract your statement. As it is, what you did has caused a lot of commotion whose only solution is for the Party to detach itself from you, if you maintain your current position.

Mr Mwila listened attentively as all the Committee members spoke. Then he burst out laughing and said:

Good people, I thank you for inviting me here. It is clear all you read is the party Constitution. If you had read the national Constitution, you would know that I have the freedom to assemble and associate with whoever I want. It is that same freedom which I exercised when I joined the PVP; and it is the same one which I exercised when I publicly supported Mrs Zimba. We all know she is the best person to lead this party and indeed our nation. Why can I not say that in public? I put it to you that if you expel me from the PVP, I will sue you for violation of my freedoms to associate and express myself.

It has been decided that the matter should be resolved internally by in-house counsel, and that is you. Advise PVP on whether or not the expulsion would be lawful, taking into consideration the provisions in the national Constitution and the PVP Constitution.

(14 marks)

PART C

Question 4

Write short notes on the following:

- The International Bill of Human Rights;
- The International Court of Justice; and
- The United Nations General Assembly.

(14 marks)

Question 5

What is gender based violence (GBV)? List the various types of GBV as outlined in the Anti-Gender Based Violence Act; and link each type of GBV to a right that is violated.

(14 marks)

SECTION D

Question 6

In the state of Zuta Land, 150 nurses went on strike when the government failed to meet their demand for a pay increment. The Zuta Land Nurses Union (ZLNU) described government's decision to dismiss all nurses who took part in the strike action as a violation of human rights. However, the government argued that it is the nurses who violated people's rights because many lives were lost during the period that they were on strike. The Minister of Health went on to say that "the law does not allow essential workers to strike for more than twenty four hours but the nurses had even gone beyond ten days". The ZLNU Chairperson replied to this, stating that the government's decision to dismiss the nurses was against Zuta Land's Industrial Relations and Employment Act which allows essential workers to demonstrate for less than ten days. "The nurses had only gone on strike for seven days and on the eight day ZLNU asked them to go back to work of which they did. Even the media recorded that, and it was aired on national television," the ZLNU Chairperson lamented.

Assuming that the ZLNU Chairperson's remarks are accurate, write a legal opinion on whether or not the dismissal of the nurses is a transgression of their rights; and if so, clearly show which rights are violated.

(14 marks)

Question 7

In Nawawo Land, many people are dissatisfied with the ruling government. It is argued by some that the President and his government mis-manage funds. Every month, each of the cabinet ministers travels outside the country at least three times. Media reports also show that the judiciary is compromised. For instance, members of the ruling party are not prosecuted and those of the opposition are charged on flimsy grounds. Even more, the nation underwent a constitutional reform process which resulted in a Draft Constitution that the people wanted. Nonetheless, the government was not comfortable with provisions such as the respect of gay rights; abolition of the death penalty; and limitation of powers of the executive. As such, the Draft Constitution did not go through the required Parliamentary ratification process. The people protested and argued that the government did not respect the principle of constitutionalism.

What is constitutionalism? With reference to the above facts, write an essay in which you show whether or not the state of Nawawo land respects the principle of constitutionalism.

(14 marks)

TOTAL: 60 MARKS

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

INTERNATIONAL LAW LPU 4041
MID YEAR FINAL EXAMINATION

Friday 7 March 2014 09:00 – 12:00

Instructions:

- a) Answer **FOUR (4) questions**, one from each Part.
- b) Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
- c) This examination paper carries a total of 60 marks.
Candidates **are permitted to bring the following statutes** into the examination room;
The United Nations Charter, The Statute of the International Court of Justice (ICJ), and
the Vienna Convention on the Law of Treaties.
- d) Candidates must not turn this page until the invigilator tells them to do so.

SECTION A

QUESTION ONE IS COMPULSORY

Four adventurous young Zambian men with possible links to a named terrorist organisation have been arrested in Lusaka after a combined operation by the Zambian Police Service and Interpol. These arrests followed an explosion on board a train in the capital of the Republic of Matomato which killed 80 people.

Among the dead were forty Matomato nationals, 20 migrant workers from the Republic of Onion and another 20 were tourists from Roma who were on holiday in Matomato. The four arrested Zambians were apparently responsible for the attacks. Zambia would like the four men to be tried in Lusaka but Roma is demanding they are tried in Roma, while the Republic of Matomato and the Republic of Onion would like them to be extradited to their countries for trial.

Under international Law, which country or countries can claim jurisdiction over the four men?

18 Marks

SECTION B

QUESTION TWO

In a 2002 address to the American public, President George W. Bush began publicly focusing attention on Iraq, which he labelled as part of an 'axis of evil' allied with terrorists and posing "a grave and growing danger" to U.S. interests through possession of 'weapons of mass destruction.'

March 20, 2003 the US invaded Iraq after failing to secure a UN resolution authorising use of force against Iraq. Was this invasion justifiable under the international law of self defence?

Explain fully using the UN Charter, case law and examples of self defence to support your position.

14 Marks

QUESTION THREE

You are the Zambian High Commissioner to the Republic of Tanzania. Your Deputy High Commissioner, his Tanzanian born wife and their Zambian born driver are involved in a fight at one of the most popular clubs in the centre of Dar-es- Salaam in which a Tanzanian jazz musician is fatally wounded. The Deputy High Commissioner, his wife and their driver are detained by the police who notify you of the arrest.

- (i) What representation would you make on behalf of each of the three persons arrested, taking into account the relevant principles in relation to diplomatic missions and duties?
- (ii) Would you consider waiving the immunity of any of your staff involved in this incident? If so on what basis would that be done?

14 Marks

SECTION C

QUESTION FOUR

Shaka Royal Air Force is a military wing of the Tujilijili Republic in North Africa. Shaka Royal Air Force in its usual operations in Southern Africa. Botolo, a war plane for Shaka Royal Air Force landed in Zambia at Kenneth Kaunda international airport in Zambia. Constable Jojo from Zambia police approached the captain of the Botolo plane and requested for a manifest for the passengers and for the goods on the aircraft. The captain for the Botolo plane declined to give constable Jojo the manifests requested. The Captain for the Botolo plane further commanded Constable Jojo to vacate the plane.

Following the incident, Constable Jojo seeks legal advice on how to go about handling the incident. - Advise

14 Marks

QUESTION FIVE

EnviroCo is a manufacturer of the product weedkiller. Although it carries out its manufacturing activities in the developing state of Povertia, it is registered in the developed states of Lucracia. The majority of its shareholders are nationals of Hegemonia. In June 2001 workers in the EnviroCo plant in Povertia were directed to strike for higher wages by their government – controlled trade union. Wagogo the manager of the plant and a national of Technolia, while attempting to keep the plant operating accidentally released a highly toxic chemical into the River GreatEast killing most of the fish in the river and polluting the fields along the river bank. The local population, who rely mainly on fishing and agriculture for their livelihoods were incensed by this and, after beating Wagogo dragged him before a local magistrate who sentenced him to ten years imprisonment in a notoriously unsanitary jail. The government of Povertia has stated its intention to expropriate the plant, vowing that the ‘foreigners responsible for the catastrophe will not receive a kwacha in compensation.’

Discuss

14 Marks

SECTION D

QUESTION SIX

The sources of international law may be defined as the actual materials from which an international lawyer determines the rule applicable to a given situation. It is generally agreed that these materials are authoritatively enumerated in Article 38 of the statute of the International Court of Justice.

Discuss these sources in sufficient detail.

14 Marks

QUESTION SEVEN

‘International personality depends on recognition and recognition alone.’ **Discuss**

14 Marks

End of Examination