

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2008 SECOND SEMESTER

1. L231 LAW OF TORT
2. L232 LAW OF TORTS
3. L242 CRIMINAL LAW II
4. L252 CONSTITUTIONAL LAW
5. L262 FAMILY LAW
6. L322 LAND LAW AND CUSTOMARY SYSTEMS OF TENURE
7. L332 COMMERCIAL LAW II
8. L342 ADMINISTRATIVE LAW II
9. L352 NATIONAL HUMAN RIGHTS LAW
10. L362 CIVIL AND CRIMINAL PROCEDURE
11. L382 INDUSTRIAL LAW
12. L411 JURISPRUDENCE
13. L412 JURISPRUDENCE II
14. L422 COMPANY LAW
15. L452 INTERNATIONAL INVESTMENT LAW
16. L492 TAXATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SECOND SEMESTER EXAMINATION PAPER, 27 AUGUST, 2008
LAW OF TORT – L231

TIME: THREE HOURS (Plus 5 Minutes to read through the paper)
INSTRUCTIONS

1. Statutes are allowed in the examination room.
 2. Answer question **ONE** which is compulsory and one question from each of the following sections.
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SECTION A

QUESTION ONE

Reacting to whether there is the Law of Torts or the Law of Tort, Wright has *inter alia* made the following observations:

“As between these two extremes it would seem more realistic for the student to approach the problem of tortious liability from a middle ground. It is true that there are a number of nominate torts. But it is likewise true that a person sustaining a loss does not of necessity have to find a label to describe a “tort” in order to obtain compensation. Many instances will appear where a plaintiff put forward a new claim, e.g.; for mental shock, and was awarded recovery. Other instances of claims partially recognized, or of claims pressing for recognition which have not as yet been openly granted, will also appear.”

(Cecil A. Wright, *Cases on the Law of Torts*, Third Ed., London, 1963 at p. 3)

Discuss the Evolutionary Developments in the Law of Tort(s)

(18marks)

SECTION B

QUESTION TWO

A cleaner at the UNZA International Airport found a diamond ring in the corner of a disused toilet room. The International Airport is managed by the UNZA Airport Authority.

There is now a dispute as to who should have possession of the ring.

Advise accordingly.

(14 marks)

QUESTION THREE

A caretaker of Mulungushi Lodge mistakenly locked one of the suites in which was a tourist couple carrying the keys to the lodge with him. Seeing the room locked one of the couple jumped out of the window breaking his leg. The other remained in the room overnight, fearing that she would hurt herself should she also try to get out through the window.

The couple is contemplating civil action against the owners of Mulungushi Lodge.

Advise the couple.

(14 marks)

SECTION C

QUESTION FOUR

- a) A, peeping through the bedroom window at night saw some strange figure in the yard who appeared to have a gun. A opened the window and fired a gun at this strange figure hitting the man in the stomach. After recovering from this injury the strange man brings an action against A for battery arguing that what he had was actually a toy gun.

Advise accordingly.

(7 marks)

- b) An electric fence, which was live, killed an innocent passerby who touched one of the wires. The passerby had a weak heart and as such he died. Deceased's Administrator of the estate brings a civil action for damages against the owner of the house.

Advise accordingly

(7 marks)

QUESTION FIVE

- a) A, the headboy in a class at a graduation ceremony pulled B behind him for taking precedence in positions in the line. B in the process fell on C who was behind A.

Discuss the liability in Tort of A and B

(7 marks)

- b) An accountant in the employment of UNZA opened a personal account in which he was depositing proceeds of sale of vegetables by UNZA. UNZA had its own Account. On discovering this, the Bursar wanted legal action taken against the Accountant who replied that he had not withdrawn any money in the account for personal use.

Advise the Bursar as to the civil liability of the accountant in tort.

(7 marks)

SECTION D

QUESTION SIX

Arising from the decision of the House of Lords in *Rylands Vs Fletcher*, House of Lords 1868 L. R. 3 H. L. 330.

Discuss and Evaluate the basis of strict liability.

(14 marks)

QUESTION SEVEN

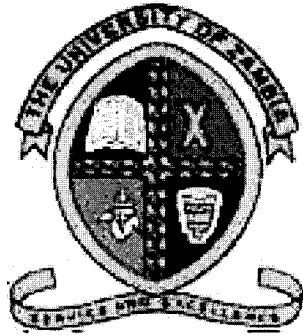
- a) Discuss the maxims *Injuria sine Damno* and *Damnum sine injuria* in tortious liability.

(7 marks)

- b) A village headman was warned of roaming lions from the Game Reserve near his village which was outside the said Reserve. The Reserve was under the management of the UNZA Wildlife Authority. The ravaging lions often roamed in the night. Despite the warning the headman decided in the night to go to a beer party in the next village. On his way the headman was eaten up by lions.

Discuss the liability in tort of the UNZA Wildlife Authority.

(7 marks)



**UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

L232 – LAW OF TORTS EXAMINATION

3RD MARCH 2009

INSTRUCTIONS

1. The duration of this examination is 3 (three) hours plus 5 (five) minutes to read through the questions.
2. There are four parts in this examination. Question 1 of part A is the **compulsory** question which carries 21 marks. You **must** also answer **one (1)** question in **each** of the remaining parts (that is parts B, C and D). This brings the total number of questions you must answer to **four (4)**.
3. No statutes are allowed in this examination.

PART A
(Answer the compulsory question)

Question 1

The UNZA Zoo has a mixed species of wild life for viewing by visitors. Rats have been attracted to the Zoo by animal waste. The presence of rats at the Zoo has resulted in the outbreak of Weil's disease. Five of the visitors who have recently been to the Zoo contracted this disease through contact with rats' urine. Two of the visitors did not pay any entry fee to the Zoo while the other three did pay.

All the five victims were rushed to the UNZA Hospital which specialises in tropical diseases. Diagnosis failed to detect this rare disease and even if diagnosed, the hospital could not have treated the five patients. The five died and representatives of their estates want to take legal action.

Advise the representatives on what action they may bring in tort. (21 Marks)

PART B
(Answer one question in this part)

Question 2

Mr. Banda and Dr. Ginsburg have been neighbours for a number of years. However, Mr. Banda (a racist) loathes Dr. Ginsburg because she is foreign, a woman and considerably more successful than Mr. Banda.

A little boy in the neighbourhood is murdered. Mr. Banda, seeing this as an opportunity to rid himself of Dr. Ginsburg, immediately rushes to the police station and reports that he witnessed Dr. Ginsburg murdering the little boy and is willing to testify against her. Dr. Ginsburg is prosecuted in the High Court and found not guilty.

- a) **Advise Dr. Ginsburg as to whether she may bring any action in tort.**
- b) **Would your answer be any different if she was found guilty at first instance, then found not guilty upon appeal to the Supreme Court?**

(13 Marks)

Question 3

Malama is in labour and immediately rushes to the nearest clinic in order to have her baby delivered. She is turned away by Mrs. Shambulo, a nurse at the clinic, because they do not have any surgical gloves. Malama cannot wait any longer and delivers her baby under a tree.

Angered by this; Malama's mother, "Bana Mukuka", writes a letter to popular Zambian Newspaper "The Stop" alleging that it was Dr. Kyeembe, who owns the clinic, and not Mrs. Shamublo that turned Malama away – which is preposterously untrue. "The Stop" publishes a front page story on the matter.

Bana Mukuka also tells exactly the same story to her friends Inonge and Mutepa who are students at the UNZA School of Medicine. They are so disgusted by Dr. Kyeembe's alleged behaviour that they simply refuse to purchase his textbooks.

Advise Dr. Kyeembe.

(13 Marks)

PART C

(Answer one question in this part)

Question 4

Chikwanda invites Milimo and her eight (8) year old son Jumali to visit her ranch in Chisamba. After a couple of glasses of gin and tonic Chikwanda decides that it is time to go to bed. She warns Milimo and Jumali not to leave the house after 10 pm as that is when she lets her vicious Rottweiler, "Sweetie" out.

Ignoring this advice, Milimo puts Jumali to bed and decides to take a walk in Chikwanda's garden. She is still rather intoxicated at this time and she steps on a trap that Chikwanda had planted to keep thieves away but neglected to warn her Milimo about. As a result Milimo loses her leg.

Upon hearing the noise outside, Jumali runs out of the house to save his mother. Unfortunately, "Sweetie" is not too far behind and pounces upon little Jumali; biting off his ears and scratching out his right eye.

Advise the parties. (13 Marks)

Question 5

Professor Patel and his wife Lungowe recently co-purchased their dream home in New Kasama. Professor Patel needs his peace and quiet to focus on writing his new book on “International Commercial Arbitration”. Lungowe on the other hand rears Canadian Pink Foxes whose fur she uses to make coats. Also dwelling there is their daughter Liseli.

Their home is located next to the One and Only True Church of Yahweh; a cult whose leader Bishop Elisheva Tziporah Hamanenga claims to be the Messiah. Every night they have “Miracle and Healing” sessions which invariably involve intolerably loud music. Knowing that Professor Patel is an atheist, Bishop Hamanenga often encourages members of the congregation to bang at his gates for prolonged periods of time. This apparently chases evil spirits.

Professor Patel is unable to concentrate on writing his book at night because of all the noise involved. Lungowe on the other hand has just discovered that her Canadian Pink Foxes are suffering miscarriages because of the shock from the unbearable noise; particularly the loud banging at the gates. Liseli simply cannot get any sleep and has started doing badly at school as a result. Liseli, Professor Patel and Lungowe wish to sue Bishop Hamanenga.

Advise them. (13 Marks)

PART D

(Answer one question in this part)

Question 6

Hibaq Enterprises manufactures a popular alcoholic drink called “Blazer”. It is made of lemon juice and vodka. It is contained in a yellow bottle the shape of a lightning bolt. Misfit Ltd creates a drink called “Blaze” using a similar shaped bottle. Moreover, instead of using a lemon juice and vodka; they use lime and kachasu.

Consumers cannot tell the difference between the two products and many people mistakenly buy “Blaze” which, as it turns out, is not as good as “Blazer”. Mistaking the former for the latter, the public simply stops buying Blazer.

- a) Advise Hibaq Enterprises.
- b) Would your answer be any different if Misfit Ltd called the drink “Kachasu Lime” but still used a similar shaped bottle?

(13 Marks)

Question 7

Tafadzwa is a salesman who approaches Yi Shun Teo the owner of “Great Dragon Chinese Restaurant”. Tafadzwa knowingly sells Mr. Teo an old faulty pan, which he promises is in excellent condition. Mr. Teo believing this, starts to use the pan to make some expensive dishes which invariably involve using rare ingredients. These meals continually get burnt and as such Mr. Teo suffers some considerable losses.

- a) **Advise Mr. Teo.**
- b) **Tafadzwa contends that the fault lies entirely with Mr. Teo for not taking the time to ensure that the pan was functioning properly. Briefly advise.**

(13 Marks)

END OF EXAM

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2008 ACADEMIC YEAR, SECOND SEMESTER EXAMINATIONS

L.242, CRIMINAL LAW II, FINAL EXAMINATION

INSTRUCTIONS: This examination paper has seven questions. You are required to answer only four questions. Question one is compulsory, which means that all candidates must answer it. You are permitted to refer to clean, unannotated copies of the Penal Code and the Criminal Procedure Code during the examination. You may also refer to the Anti-Corruption Commission Act, No. 42 of 1996.

TIME: THREE HOURS (Including 5 minutes for reading the question paper)

QUESTION ONE (Compulsory question) (18 marks)

Boyd Hajunza is an up-coming tobacco commercial farmer in the Kalomo District of the Southern Province of Zambia. In the 2005-2006 farming season, Hajunza cultivated fifty acres of Virginia tobacco on his land, but he lost twenty – percent of his profit due to thefts of his harvest committed by thieves from the two big surrounding villages of Hampande and Siachoongo.

In the following farming season of 2006-2007, he decided to mount a twenty four hour armed guard, day and night, to protect his property from the thieves. At two hours (02:00hrs) in the early morning of 11th of June, 2007, his two armed guards who kept watch over his farm during the night, heard strange footstep noise coming from the centre of the farm. The night of that day was very dark, which made them unable to see whether the foot-step noise was being made by human beings or wild animals. From a distance which they estimated to be about one hundred metres, they both sat down, aimed their shot-guns in the direction where the noise was coming from and opened fire. Each guard fired in the direction twice in quick succession. When they ceased firing, they slowly walked towards the direction and heard groaning sounds of two men.

Upon reaching the spot where the two injured men were lying, the guards discovered that one of the injured men had been shot twice in the belly, while the other man had been shot in the belly and in the groin. They were taken to Kalomo Hospital, where they both died on 15th June, 2007. Investigations have not revealed which guard killed which deceased person.

When questioned by the Police as to why they fired at the suspected tobacco thieves from a sitting position, the two guards responded by stating that they did not want the shot gun bullets to catch the suspected thieves above their knees, because the intention was not to kill them but to incapacitate them from escaping from the farm.

If you were the state prosecutor handling the docket of this case, what charge or charges, if any, would you prefer against each guard? What defence or defences would you expect to be pleaded by the two accused persons? Explain in brief terms the charge or charges that you would prefer against them.

QUESTION TWO (14 Marks)

Kamayoyo Sandando has been a sales manager in Zambia Sugar Company for 18 years without earning any promotion to the higher management echelons of the company. In order to rise to the position of General Manager, he had given twenty million Kwacha (K20,000,000.00) to the Managing Director, Bwalya Chisunka.

The Managing Director after receiving the 'gift', summarily dismissed the incumbent General Manager who was properly qualified for the job, for reporting for work ten (10) minutes late and replaced him with Kamayoyo Sandando, who was not qualified to occupy the position. Assuming that Zambia Sugar Company is a privately-owned company and not a public corporation, indicate the offences which Chisunka and Sandando have committed under the Anti-Corruption Act., No. 42 of 1996, and state the penalties for the offences you think they have committed.

QUESTION THREE (14 Marks)

Chenjelani Zulu without a licence or authority, imported into Zambia a book, published in Cuba entitled '**How to overthrow Capitalist African Governments South of the Sahara Desert.**' This book is one of the documents that have been prohibited from being brought into Zambia by the Zambian President, pursuant to powers vested in him by the Penal Code.

Chenjelani was not selling or reproducing the book. He was merely found reading the book at his home by an undercover policeman. He has been taken to the Police Station and a charge is being preferred against him. Name the offence under the Penal Code which the Police can properly lay against him, and indicate the penalty for the offence?

QUESTION FOUR (14 Marks)

Beauty Simasiku is a grade 12 school girl at Fatima Girls School in Ndola, and is two months pregnant. She intends to get rid of the two months old pregnancy so that she could be able to go to Evelyn Hone College in Lusaka, the following year to pursue a three year Diploma in Pharmaceutical Studies, without the trouble of looking after a baby. She has approached Amon Ng'anga for herbs to carry out her own miscarriage. Amon has provided her with the necessary herbs. Beauty, on her own, has successfully carried out the miscarriage. But, under moral considerations, Beauty's neighbours have reported the matter to the Police.

- (a) What offences have Beauty Simasiku and Amon Ng'anga, (the supplier of the abortion-herbs) committed? State the penalties for the offences.
- (b) In what two ways do these offences differ from child destruction?

QUESTION FIVE (14 Marks)

On 8th January, 2008, two men in Kitwe were caught digging out dead bodies from Kantolomba Cemetery with the aim of removing clothes from the bodies for their use and for resale.

State the offence which these two men have committed, and its penalty.

QUESTION SIX (14 Marks)

Choose two of three topics listed bellow, and briefly discuss each topic

- (a) In December 2008, fifty eight men, all of them citizens of Botswana, were caught in the bush near Kasane Town, in Northern Botswana, carrying out military training with the aim of overthrowing the Government of Zambia. The Zambian Government has asked for their extradition to Zambia so that they could be tried for treason in Zambia. Would such a trial be legal? Discuss. Assume that there is an extradition treaty between Zambia and Botswana.
- (b) According to the Zambian Penal Code, Chapter 87 of the Laws of Zambia, a woman can be indicted for and convicted of indecent assault. Discuss, indicating the relevant law in the code.
- (c) Briefly discuss the *mens rea* of the offence of plain or ordinary robbery, indicating the section in the Penal Code.

QUESTION SEVEN (14 Marks)

Bernard Lungu, a well known petty thief in the neighbourhood, was hungry and needed something to eat. When he noticed that Christopher Musonda's kitchen door was open, he entered the kitchen through the open door, looking for food. He did not find any food in the kitchen and went out. Musonda was in the living room when Lungu entered the kitchen.

When Musonda looked in the direction through the living room window, he saw Lungu exiting from the kitchen. He ran after him, caught him and handed him to the police. Name and briefly explain the offence Lungu has committed, if any under the Penal Code. Indicate its penalty.

END OF THE EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

FINAL EXAMINATION

SECOND SEMESTER – FEBRUARY 2009

L252: CONSTITUTIONAL LAW

INSTRUCTIONS:

1. Answer Four (4) Questions: ONE Question from Each Section.
 2. Question One (1) is Compulsory.
 3. Question ONE carries 26 Marks and 8 Marks for each one of the remaining Questions.
 4. You have Five (5) Minutes to read the paper and THREE (3) Hours to answer the questions.
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SECTION ONE

QUESTION ONE

Francis Mabonga is a politician facing several counts of corruption before the Principal Resident Magistrate (PRM) Mr. Thomas Banda. He was found with a case to answer and put on his defence. Throughout the course of the trial there has been comments in the media on his case by some of the officers of the Anti-Corruption Commission (ACC). He felt that the comments were undermining his chances of receiving a free and fair trial as guaranteed by the Constitution. He also realised that there was no one other than himself to respond to the comments.

On 1st February 2009, the Director General of the ACC issued a statement that they had summoned Mr. Mabonga to their officers for interviews and possible arrest on some other charges they had been investigating. The following day Mr. Mabonga called a press conference at which he denounced the ACC as an institution, which was being used by his enemies to destroy his political ambitions since he declared his intention to stand as a presidential candidate in 2011 Presidential Elections and that even the

charges he was facing in court were politically motivated. He went on to say that he doubted the independence of some of the magistrates hearing cases of corruption involving other political leaders.

On 13th February 2009, Mabonga appeared before the PRM Thomas Banda for the continued hearing of his case. Before the court could adjourn for the day, Mr. Banda on his own motion asked Mabonga to confirm whether the statements published in the media attributed to him had in fact been made by him. Mabonga responded by saying he was not sure as which statement the court was referring to as he had issued a number of press statements. The Court said that he admitted issuing press statements was enough and asked him to show cause why his bail should not be revoked and for him to be kept in jail until the case was concluded. He further stated that being released on bail was a privilege and not a right and the court had to ensure that whilst on bail Mabonga did not abuse that freedom.

Mabonga was taken aback and he decided to apologise to the court and undertook not to issue any further statements. The Court told him because it had moved on its own motion and in the light of the undertaking given it would not pursue the matter further.

The relevant provisions governing the granting of bail to accused persons is found in the Criminal Procedure Code. Section 123 reads:

(1) When any person is arrested or detained, or appears before or is brought before a subordinate court, the High Court or Supreme Court he may, at any time while he is in custody, or at any stage of the proceedings before such court, be admitted to bail upon providing a surety or sureties sufficient, in the opinion of the police officer concerned or court, to secure his appearance, or be released upon his own recognizance if such officer or court thinks fit:

Provided that any person charged with-

- (i) murder, treason or any other offence carrying a possible or mandatory capital penalty;
- (ii) misprision of treason or treason-felony; or
- (iii) aggravated robbery;
- (iv) theft of motor vehicle, if such person has previously been convicted of theft of motor vehicle.

shall not be granted bail by either a subordinate court, the High Court or Supreme Court or be released by any Police Officer.

(2) Subject to the provisions of section one hundred and twenty-six, before any person is admitted to bail or released on his own recognizance, a bond (hereinafter referred to as a bail bond), for such sum as the court or officer, as the case may be, thinks sufficient, shall be executed by such person and by the surety or sureties, or by such person alone, as the case may be, conditioned that such person shall attend at the time and place mentioned in such bond and at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(3) The High Court may, at any time, on the application of an accused person, order him, whether or not he has been committed for trial, to be admitted to bail or released on his own recognizance, and the bail bond in any such case may, if the order so directs, be executed before any magistrate.

(4) Notwithstanding anything in this section contained, no person charged with an offence under the State Security Act shall be admitted to bail, either pending trial or pending appeal, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced.

(5) Notwithstanding anything to the contrary contained in this Code or in any written law, it is declared for the avoidance of doubt that upon a person being convicted or sentenced by a subordinate court and before the entering of an appeal by such person against the conviction or sentence or both, the subordinate court which convicted or sentenced such person or the High Court has and shall have no power to release that person on bail with or without securities.

Section 124 provides:

In addition to the condition mentioned in subsection (2) of section one hundred and twenty-three, the court or officer before whom a bail bond is executed may impose such further conditions upon such bond as may seem reasonable and necessary in any particular case.

Section 125 provides:

(1) As soon as a bail bond has been executed, the person for whose appearance it has been executed shall be released, and, when he is in prison, the court admitting him to bail shall issue an order of release to the officer in charge of the prison, and such officer, on receipt of the order, shall release him.

(2) Nothing in this section or in section one hundred and twenty-three shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which a bail bond was executed.

Section 126 reads:

(1) The amount of bail shall, in every case, be fixed with due regard to the circumstances of the case, but shall not be excessive.

(2) The court or police officer admitting a person to bail or releasing him on his own recognizance may, in lieu of a bail bond, accept a deposit of money, or a deposit of property, from any person who would otherwise have had to execute a bail bond under the provisions of section one hundred and twenty-three, and may attach to such deposit such conditions as might have been attached to a bail bond, and on any breach of any such condition such deposit shall be forfeited.

(3) The High Court may, in any case, direct that the bail or deposit required by a subordinate court or by a police officer be reduced, or may vary or add to any conditions imposed under the provisions of section one hundred and twenty-four.

When he was arrested in 2006, he was released after signing a police Bond and he bound himself to the following obligations:

To appear before the PRM's Court at Lusaka on the 20th day of March 2006 at 09:00 hours and on any other or subsequent day when required by the Court to answer to the said charge and to be dealt with according to law.

And the said principal party (Francis Mabonga) together with the undersigned sureties hereby severally acknowledge themselves bound to forfeit to the Government of the Republic of Zambia the sums following viz,: the said principal party the sum of K50 million and the said sureties the sum of K50 million each in case the said principal party fails to perform the above obligations or any part thereof.

Mabonga had provided two sureties who also signed the Police Bond. At the end of each appearance the Police Bond was extended to the next hearing date. Mabonga has never failed to attend Court.

Mabonga is convinced that whatever transpired in Court was wrong and in violation of some of his Constitutional rights and freedoms. He has come to you for advice. He

wants to know whether his constitutional rights and freedoms had been, were being or had been violated given what had transpired in Court on 13th February 2009.

Advise him.

26 Marks

SECTION TWO

QUESTION TWO

James Banda is a Zambian pursuing a law degree at one of the universities in the United Kingdom. He has read the Zambian Constitution and is fascinated by Article 1(4) of the Constitution, which reads:

This Constitution shall bind all persons in the Republic of Zambia and all Legislative, Executive and Judicial organs of the State at all levels.

He wants to know how the Constitution binds the legislature in Zambia.

Explain to him

8 Marks

QUESTION THREE

The President of the Republic of Zambia has repeatedly complained about the functions of the office of the Auditor General as constituted in Article 121 of the Constitution. He is particularly unhappy with the Article 121(6) which reads:

In the exercise of his functions under clauses (2), (3) and (4), the Auditor-General shall not be subjected to the direction or control of any other person or authority.

At a news conference held on 1st February 2009, he announced to the nation that before the end of the year he was going to exercise his powers under Article 61 he was going to issue a Statutory Order creating the office of the Comptroller General. Once the office was created the Auditor General was going to be under the control and direction of the Comptroller General who will in turn report to the President.

The Law Association of Zambia is alarmed by this announcement by the President and has called an emergency Council meeting. You are member of the Council with expertise in constitutional law and you have been tasked by the Council to prepare an opinion for consideration by Council on the Constitutionality of the President's plans and what steps can be taken by LAZ to prevent the implementation of the said decision by the President.

Prepare the opinion

8 Marks

SECTION THREE

QUESTION FOUR

John Smith is a British national who has been living in Zambia for the last 20 years. On 10th February 2009, he was arrested by officers of the Drug Enforcement Commission acting on a tip from an informer that he was growing cannabis on his farm in Chisamba. Upon raiding the farm they found cannabis planted in an area in extent of 10 acres in green houses. He was detained at Kamwala Remand Prison pending trial.

The discovery prompted a huge public outcry. Most of the people wonder how a foreigner can with impunity plant such quantities of cannabis. Members of the ruling party gathered and marched to the office of the Minister of Home Affairs and demanded Smith's deportation to his home country.

On 17th February 2009, the Minister issued a warrant for the deportation of Mr. Smith from Zambia pursuant to Section 26(1) of the Immigration and Deportation Act, Chapter 123 of the Laws of Zambia, which reads:

After receiving the particulars under section thirty-three of the Penal Code, in respect of a person who is not a citizen, the Minister (unless the term of imprisonment is set aside on appeal) shall, at the expiration of the sentence, pursuant to a warrant under his hand deport such person from Zambia.

Section 33 of the Penal Code, Chapter 87 of the Laws of Zambia reads:

Whenever a court shall sentence to a term of imprisonment any person-

- (a) who is not a citizen of Zambia; and
- (b) who has been convicted of an offence under this Code, or under any written law other than an offence relating to the driving of a motor vehicle set out in the Roads and Road Traffic Act or in any regulations for the time being in force made thereunder;

the public prosecutor shall forth with, forward to the Minister responsible for home affairs the particulars of the conviction and sentence and all other particulars specified in the Second Schedule.

Smith has retained the firm, where you are a researcher to represent him and one of the partners of the firm has asked you to prepare an opinion on the constitutionality of the Minister's decision to deport Mr. Smith.

Prepare the opinion

8 Marks

QUESTION FIVE

Moses Kaunjika is fascinated by the provisions of Article 28 of the Constitution. He wants to know the possible effects of repealing the said Article from the Constitution.

Advise him

SECTION FOUR

QUESTION SIX

Mwila Mutaba has just graduated with a degree in law from one of the Universities in Australia. He is fascinated by the status that the Zambia Constitution claims for itself, which is captured in Article 1(3) of the Constitution. He wants to know whether there are differences in the manner in which the Courts are expected to interpret the Constitution and the manner in which they are expected to interpret the laws passed Parliament in the exercise of its legislative powers.

Explain to him.

8 Marks

QUESTION SEVEN

Peter Kapasula is a student of political science but he has keen interest in legal issues and he sees some connenctions between politics and the law. One day whilst browsing through your notes on constitutional law he comes across this phrase "Countermajoritarian dilemma". He wants to know what it is and what causes the said dilemma.

8 Marks

Explain to him

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L262 FAMILY LAW

2008 SEMISTER II EXAMINATION

DATE: 26TH FEBRUARY, 2009

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

INSTRUCTIONS: ANSWER 4 QUESTIONS, QUESTION 1 AND ATLEAST ONE QUESTION FROM EACH PART

QUESTION 1 IS COMPULSORY

QUESTION 1 CARRIES 18 MARKS AND THE OTHERS 14 MARKS EACH

PART A.

QUESTION 1

Mwami (40) and his wife Linda (27) agreed that in order to improve their financial standing he should take a good paying job in South Africa, the contract of which is two years. Mwami left in January, 2008 and returned home periodically to visit his wife and their three children aged 6, 4, and 2 but unknown to him in June 2008 she fell in love with Dennis and has continued to see him. Dennis has intimated that he would like to marry Linda if she gets a divorce from Mwami. Linda also wants to leave Mwami, but does not tell him so that he can continue to maintain her.

Dennis has been separated from his wife Wanga since 2006 but she has no intention of divorcing Dennis. She is a staunch Catholic and teaches at a Roman Catholic Secondary School which does not employ divorced

persons. She is 30 years old and has two children with Dennis aged 8 and 10.

Advice all parties with regard to the law of maintenance. **(18 marks)**

PART B

QUESTION 2

“In the eyes of the law some marriages suffer from impediments which lead them being either void or voidable” *Black, Bond and Bridge, Family Law: A Practical Approach 4th Edition Blackstone Press Limited.*

(a) Discuss the legal impediments.

(b) Explain the effect of a decree of nullity. **(14 marks)**

QUESTION 3

The facts of *Livingstone–Stallard v Livingstone-Stallard* [1974] Fam 47 are that the husband was 56, the wife 24. The marriage was unsatisfactory from the start. The wife’s complaints about her husband’s behaviour included criticizing her in public over petty things, like her cooking calling her names and using vulgar language to her, and at one time spat at her. Once he tried to kick her out of bed; criticized her for leaving her clothes in the sink to soak over night, and also when she offered a glass of cherry to the photographer who delivered their wedding photographs, forbidding her to give refreshments to traders again, lest her faculties became impaired and they took advantage of her. The wife left after he bundled her out of the house on a cold night and assaulted her when she tried to get back into the house. She suffered bruising and was in a very nervous state for six weeks, needing sedation in order to sleep.

- Mrs Muma is in a very similar situation with her soldier husband and consults you on the law of divorce. Advise her. **(14 marks)**

QUESTION 4

Adamssen and Eve have lived together in Zambia for 15 years and have a child aged 14. They never got married. Ever since they have been together they have possessed a joint bank account, but Eve has not earned any money because she busied herself with voluntary work at a Missionary run Orphanage.

Their local church has never approved of their cohabitation. They wish their union to be recongised as a common law marriage so that the church can accept them. The Mission too cannot offer Eve full-time or contract employment on moral grounds, stating that it would be against their faith and also against public policy. Recognition of their union as a common law marriage would change all that.

Advise Adamssen and Eve on the state of common law marriages in Zambia today, and whether or not theirs can be recognized as a common law marriage. **(14 marks)**

PART C

QUESTION 5

In *Re D (1976) 1 All ER 326*, an 11 year old suffered from Sotos syndrome. Her mother and doctors agreed that she ought to be sterilized to prevent her being seduced and having to cope with the effects of an unwanted pregnancy. This proposed course of action so distressed Mima the girl's Human Rights tutor at College that she decided to adopt her to prevent the operation, stating that it is a basic human right of a female to reproduce.

Advice Mima on the requirements for obtaining an Adoption Order.

(14 marks)

QUESTION 6

At common law an illegitimate child was unable to take on intestacy. Write an essay on how statute has changed and/or modified this.

(14 marks)

QUESTION 7

Mbula and his wife Kate died in a road accident on their way from a relative's son's wedding seven months ago. Mbula and Kate had built a successful chain of stores which allowed them to enjoy holidays abroad and education in private schools for their three daughters and two sons, the eldest of whom is in 2nd year law class at University, His name is Amaka Mbula.

The Children are distraught to discover that their father had a mistress, Winnie, with whom he had a set of twins, and that a week before his death he had executed a new will leaving the family home (which was in his sole name) and part of his life savings to Winnie after she had falsely told him that she was expecting his baby.

How should Amaka and his siblings deal with this discovery? **(14 marks)**

****END****

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2009 SEMESTER 2 FINAL EXAMINATIONS
FEBRUARY 2009
L322-LAND LAW AND CUSTOMARY SYSTEMS OF TENURE

INSTRUCTIONS:

- 1) ANSWER FOUR (4) QUESTIONS-ONE FROM EACH PART. PART ONE IS COMPULSORY**
 - 2) TIME: THREE (3) HOURS PLUS FIVE (5) MINUTES TO READ THE PAPER**
 - 3) NO STATUTES ALLOWED IN THE EXAMINATION HALL**
 - 4) USE OF APPROPRIATE CASES WILL BE HIGHLY REWARDING**
-

PART ONE

1. (a) The issue of caveats has generated a lot of litigation in
Zambian courts. There is now abundant Case Law on the subject.

Discuss the Case Law that has been generated as a result of litigation on caveats clearly pointing out the principles propounded or established in each case.

[9 MARKS]

- (b) The present town planning system in Zambia is provided for under the Town and Country Planning Act (CAP 283 of the Laws of Zambia). Discuss the main elements or features of the land use planning system in Zambia.

[9 MARKS]

PART TWO

2. (a) With the aid of Case Law discuss the various protections afforded by the law to tenants in Zambia
[9 MARKS]
- (b) Critically analyze the basis of the British South Africa Company claims to mineral rights in Zambia.
[5 MARKS]
3. (a) Discuss the main features of Customary land tenure in Zambia.
[8 MARKS]
- (b) Discuss the rationale behind the enactment of the Housing (Statutory and improvement Areas) act of 1974. What were the guiding principles in the drafting of the Act and how were the same incorporated under the Act?
[6 MARKS]

PART THREE

4. (a) The Law of adverse possession is something of a peculiarity in English Land Law. Discuss the basic principle of adverse possession and the applicability of the principle to the legal regime in Zambia.
[8MARKS]
- (b) Discuss the decision in White vs Westerman and Others (1983) ZR 135
[6 MARKS]
5. (a) You are a Learner Legal Practitioner in the Firm of Messrs Sangwapo and Associates. This morning your Principal Mr. Imikendu has requested you to prepare a presentation on the common law remedy of distress as modified by statute. The presentation is to be made at a workshop for certificated bailiffs.
Proceed.
[8 MARKS]

(b) The 1995 Lands Act provides for inter alia, forfeiture of the lease in case of breach of a covenant or condition under the Presidential lease. The provision on forfeiture has generated a great deal of litigation. Identify and discuss with the aid of Case Law the pertinent issues that have arisen on the exercise of the power of forfeiture by the State.

[6 MARKS]

PART FOUR

6. (a) In 2003 the President of the Republic of Zambia appointed a Commission of Inquiry to review the republican Constitution. The Commission received submissions on the subsector of land. The final Mungomba Draft Constitution (which is now under debate at the National Constitutional Conference) contains provisions relating to land. In the Fifth National Development Plan (2006-2010) the Government of the Republic of Zambia identified a number of the challenges that hinder the land administration and delivery system in Zambia.

Discuss the major Mungomba Commission recommendations which finally found expression in the final Draft Constitution. In the light of Commission recommendations and in view of the Fifth National Development Plan identify and discuss the major bottlenecks or challenges facing the land administration.

[9 MARKS]

(b) Discuss the decision in **Zimco Properties Limited vs. Dinalar Randee Enterprises (1988/89) ZR 114**

[5 MARKS]

7. (a) The term 'eminent domain' is said to have originated with Grotius, the 17th Century Legal Scholar. Grotius believed that the State possessed the power to take or destroy property for the benefit of the social unit, but he believed that when the State so acted, it was obliged to compensate the injured property owner for his losses. Blackstone too, believed that society had no general power to take the private property of land owners except on payment of reasonable price.

Discuss the above statement in view of the state of the law in Zambia.
[9 marks]

- (b) Discuss the inadequacies of customary holding in Zambia.
[5 MARKS]

END

THE UNIVERSITY OF ZAMBIA
UNIVERSITY EXAMINATIONS – 2008
L332
COMMERCIAL LAW II

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

- INSTRUCTIONS:**
1. Students may take into the examinations hall and consult clean, unmarked copies of any relevant statute.
 2. In all candidates must answer four questions.

QUESTION 1 AND ANY THREE

Question 1:

Harrod runs a successful maize farm in Mazabuka. He maintains a current account with Vumu Commercial Bank.

On 17th November 2006, Harrod supplied maize seed worth K6 million to Kwenga on credit payable within sixty days. On the 22nd December 2006, Kwenga prepares a **bearer cheque**, which he duly signs and gives to Harrod in settlement of the debt. The cheque is for K6 million and Kwenga being in a hurry, writes the “Six Million” somewhat in the middle of the space provided for the endorsement of the amount in words so that there is sufficient room for additions on the left side of the space.

Before presenting the cheque for payment, Harrod writes the word “Twenty” before the words “Six Million” and adds the figure “2” in the box for the amount in figures so that it now appears as though the cheque was for twenty six million kwacha.

On his way to the bank Harrod has an accident and in the process Swiftfinger steals the cheque from his brief case. Harrod discovered the loss of the cheque only on the 25th December 2006 after gaining consciousness.

Meanwhile, on the 23rd December 2006, Kwenga discovers the seed supplied by Harrod was expired. He immediately wrote to Vumu Commercial Bank stopping payment of the cheque. The letter containing the instructions only arrived at the bank’s mail bay at 10:00 hours on the 24th December 2006 and was only opened and read at 10:55 hours. Meanwhile, at 10:30 hours on 24th December 2006 Swiftfinger presented the cheque and was paid K26 million by teller No. 3.

Although teller No. 3 confirmed that Harrod’s account was only in credit to the tune of K10 million, he was aware of the existing overdraft arrangement in favour of Kwenga which the Manager sanctioned.

Consider the legal issues and advise the respective parties as to their rights and liabilities if any.

Question 2:

(a) Mutambo who owes money to Kasonde, draws a cheque in favour of Kasonde. He trusts Kasonde so much that apart from his signature, he writes nothing else on the cheque. Kasonde completes the cheque showing an amount twice what Mutambo owes and indorses it in blank. Kasonde's brother secretly picks up the cheque from Kasonde's bedroom and negotiates it to Dean. Dean presents it for payment and it is dishonoured because of a mistake in the bank, Mutambo's account appeared overdrawn.

Advise the parties.

(b) With suitable illustrations, compare and contrast indorsement in blank, special indorsement, conditional indorsement and restrictive indorsement.

Question 3:

James took out a life insurance policy with Zania Insurance Co. The policy covered death caused by accidental injury but not disease. James was involved in a road accident in which he sustained severe injury to his right arm and rib cage. He lost a considerable amount of blood in the accident. This aggravated his anemic condition. On arrival at the University Teaching Hospital, the doctor in charge advised that the blood bank was empty.

James died the following day. The doctor who attended to James explained that James' anemic condition could not have caused death without a further loss of blood, that the loss of blood was not to such an extent as would have caused death in a normal man of James' age and size, and that there was a fairly good chance that injury sustained, especially in the ribs would have deteriorated and possibly caused death had James not died earlier.

Consider whether a claim on James' insurance can succeed.

Question 4:

(a) "The absolute rule is that the court will not recognize a benefit occurring to a criminal for his crime... His executors or administrator claims as his representative and, as his representative, fails under the same ban..."

With the help of the relevant authorities, discuss this quotation.

(b) What principle of law was involved in **London Joint Stock Bank v Macmillan and Arthur** (1918) AC 777.

Question 5:

On the 7th April 2006, Muzungu bought a second hand BMW Car along Deadan Kimathi Road opposite the Customs Office. He paid K60 million cash for it to Swiftfinger who imported it from South Africa in March 2006.

On 9th April 2006, Muzungu approached Prospect Insurance Brokers to arrange for the insurance of his newly acquired car. He was advised that to comprehensively insure the car for the one year with Western Insurance, a leading insurance company, it would cost him K6 million in premiums.

Muzungu was then handed a proposal form by an agent of Prospect Insurance Brokers which he immediately completed and handed back to the agent of Prospect Insurance Brokers. One of the questions in the proposal form read as follows:-

“Has the motor vehicle been stolen previously or has there been any reported attempt to steal it?”

To this question, Muzungu answered “No”.

Prospect Insurance Brokers then gave Muzungu a cover note headed “Western Insurance Corporation Limited” signed by Prospect Insurance Brokers for and on behalf of Western Insurance Corporation Limited. The cover note indicated the period of cover as 365 days from the 10th April 2006. In return, Muzungu paid Prospect Insurance Brokers by cheque drawn on Continental Bank on the 10th April 2006. The cheque was deposited the same day.

On 11th June 2006, while enjoying a drive in his car with his girl friend Melody on Great East Road, police officers from Interpol stopped Muzungu and advised him that the vehicle had been stolen from Brixton in South Africa. They accordingly seized the vehicle and directed that it be parked at Lilayi Police Training School.

As Muzungu was driving to Lilayi in anger, he collided with an on-coming truck. Although he survived the accident, his vehicle was damaged beyond economic repair.

Muzungu reported the accident to the Police and Prospect Insurance Brokers on the day it happened. At the time he reported, a clerk at Prospect Insurance Brokers informed him that his cheque for K6 million drawn in their favour on the 10th April had been returned by Continental Bank with the answer “R/D” but that due to an oversight on their part, they did not contact him earlier. Muzungu then visited his bankers who apologized most sincerely for not paying the cheque “due to a mix up in account numbers”.

Advise the parties as to their legal positions..

Question 6:

Discuss the legal problems arising from any three of the following:-

- (a) "Days of grace" in insurance law.
- (b) Inchoate instrument under the Bills of Exchange Act, 1882.
- (c) The position of a broker under the Insurance Act No. 27 of 1997.
- (d) Signature by procuration on a negotiable Instrument.

Question 7: (a) What was the decision in JOACHIMSON v. SWISS BANK CORPORATION (1921) and how has it helped in understanding the relationship between Banker and Customer?

- (b) Identify the circumstances in which premiums paid would be recoverable by the insured.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

UNIVERSITY SECOND SEMESTER EXAMINATIONS – February 2008

L342 ADMINISTRATIVE LAW 2

INSTRUCTIONS

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

- 1. ANSWER FOUR QUESTIONS, AT LEAST ONE QUESTION FROM EACH PART**
 - 2. EACH QUESTION CARRIES 15 MARKS AND THE TOTAL MARKS FOR THIS EXAMINATION IS 60**
-

PART A

1. The President of the People's Party Benson Banda is infuriated at the fact that although the Mungomba Constitutional Review Commission recommended that the current Constitution should be repealed and replaced and further that the Constitution should be adopted by a national referendum, the Republican President and his Cabinet at a meeting decided to present to the National Assembly a National Constitutional Conference Bill. The relevant provision of the Bill provides as follows:

- 13(1) Subject to other provisions of this Act the functions of the Conference shall be to
- (a) Consider and deliberate the provisions of the report of the Commission and the draft Constitution.
 - (b) Adopt the draft Constitution or part thereof pursuant to paragraph (a)
 - (c) Submit the adopted draft Constitution or part thereof to the Minister for presentation to Parliament or for submission to a referendum, if any provision of the draft Constitution purports to amend Part III or Article 79 of the Constitution or contains any provisions in respect of which there is no agreement as required by subsection 7 of section seventeen; Provided that the entire draft Constitution shall be submitted to a referendum if a decision to do so is made by the members under sub-section (2)
- (2) The members shall during their deliberations determine whatever they shall submit to the Minister for-

- (a) Presentation to Parliament of a draft bill for the enactment of those provisions of the Constitution which do not require a referendum; or
 - (b) Submission to a referendum, a draft bill for any alteration of Part III or Article 79 of the Constitution in respect of which there is no agreement or of the entire draft Constitution as adopted under this Act without the option referred to in paragraph (a)
- (3) The members may in considering and deliberating the draft Constitution under sub-section (1) vary, confirm, add, or remove any provision of the draft Constitution as members consider appropriate.

The President of the People's Party is particularly concerned about the latitude given to the National Constitutional Conference to amend or repeal and replace the Constitution. The President of the People's Party is informed that you are an outstanding student of administrative law and therefore decides to seek your counsel regarding the People's Party decision to challenge the Government's rejection of the recommendation by the Mungomba Constitutional Review Commission that the current Constitution should be repealed and replaced and further that the Constitution should be adopted by a Constituent Assembly. The People's Party decided that the challenge should be by way of Judicial Review. **ADVISE**

2. "Of course in some respects an application for judicial review appears to have similarities to civil proceedings between the opposing parties in which an injunction may be ordered by the court at the suit of one party directed to the other. When correctly analysed however, the apparent similarity disappears..." Per Gardner J in *Kabimba v the Attorney - general and Lusaka City Council (1995-1997) Z.R.* at p. 155. **ADVISE**

PART B

3. Justice Sedley in the case of *R v Somerset and A.R.C. Southern Ltd Ex Parte Dixon* 1997 C.O.D. at p. 327 observed that:

"It is entirely misconceived at the leave stage to elevate the question of standing above the elementary level of excluding busy bodies and to demand something akin to a special private interest in the subject matter."

Why did Justice Sedley consider this to be a misconception?

4. President Saul Sakala of the Republic of Zambia is incensed by persistent criticism leveled against his government by journalists. Consequently, he issued a directive that if the criticisms do not cease within a fortnight he will consider ordering extra judicial killings of journalists. The journalists are clearly petrified by the threat and resolve to issue an injunction against the President, restraining him from effecting the extra-judicial killings. The journalists approach you for advice. **ADVISE**

PART C

5. The One-Party State Constitution which came into force in 1973 provided for the Commission for Investigations and for the Investigator- General.

Discuss the Strengths and weaknesses of the Commission for Investigations

6. "It must be noted that there is no unfettered right to judicial review. The aggrieved individual must seek leave to apply for judicial review and a number of criteria govern the exercise of discretion to grant or refuse the application for judicial review." *Hilaire Barnett, Constitutional and Administrative Law, p. 905. DISCUSS*

7. Charles Phiri is employed by Zambia Dairy Produce Board as General Manager. He lives in a mansion situated on sub-division J of stand no. 145 Lusaka. The property belongs to the Zambia Dairy Produce Board which holds a certificate numbered 1056. Charles Phiri has served Zambia Dairy Produce Board for a period of twenty years and has therefore qualified for early retirement. Charles Phiri does not own any house. Anxious about where he would live after retirement, Charles Phiri decides to submit an application to the Board of Directors of the Zambia Dairy Produce Board to purchase the house he is currently occupying. After considering the conditions of service the Board resolved that the conditions of service are silent on the sale of company houses and decided ultimately that the Board would not sell the property in question to Charles Phiri. Charles Phiri however believes that he has a legal option to purchase the property. Charles Phiri therefore decides to contest the decision of the Board. Charles Phiri is reluctant to commence proceedings in the High Court because the proceedings are long and winding. Charles Phiri is however reliably informed that the Lands Tribunal offers a speedy mechanism of resolving land disputes. However before filing the complaint with the Lands Tribunal, Charles Phiri decides to approach you for advice. **ADVISE**

END OF EXAMINATION

**UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

2008/2009 SEMESTER 2 FINAL EXAMINATION

17TH FEBRUARY 2009

L352- NATIONAL HUMAN RIGHTS LAWS

Instructions:

Answer question ONE and any other three questions

Each question carries 15 marks

The following documents may be consulted: The Bill of Rights (Part III of the Constitution unmarked, The Human Rights Act No. 39 of 1996; Zambia Police (amendment) Act No. 14 of 1999; The Judicial (Code of Conduct) Act, No. 13 of 1999 and The Commission for Investigations Act Chapter 39, of the Laws of Zambia.

Time allowed: Three Hours plus five (5) minutes reading time.

1. A Zambian woman residing in South Africa and working as a nurse in one of the highly rated hospitals of that country conceives a child out of wedlock. The putative father is a renowned surgeon at the same hospital who has indicated that he has no plans of taking custody of the said child at any given time in the foreseeable future. The Zambian woman whose passport has just expired intends to travel to Zambia for Easter holiday and as such applies for one travel document for herself, but which should include her child as well, with the Zambian Mission in Pretoria. At the Zambian High Commission she is made to swear an affidavit stating that she is the mother of this particular child born out of wedlock before her application can be processed. This she does and proceeds to Zambia for her holiday. While in Zambia her travel document expires and therefore she uses this opportunity to apply for a new passport which should include her child. Upon filing in her application for a new passport she is once again advised to swear an affidavit similar to the one sworn in South Africa at the Zambian Mission. This she refuses to do this time around on the

ground that the requirement is unconstitutional. She then decides to protest by organizing a peaceful assembly of fellow women who have been subjected to such treatment by the Passport Office. The peaceful assembly turns out to be a success and attracts a lot of peaceful protestors. However, while in the procession the protestors are stopped by the police, arrested and are charged under the relevant penal section for protesting without a permit. This action by the Police attracts a lot of attention from various interest groups who strongly feel that the case ought to be defended in the public interest. One such group is a professional body regulated by an act of Parliament which has decided to pursue the case on behalf of the protestors and has gone a step further to offer free legal services to the Zambian woman nurse whose application with the passport office has not been attended to on the ground that it has no accompanying sworn affidavit. A number of legal analysts are of the view that the professional body's standing in these matters is challengeable and might undermine the prosecution of two important questions of public interest.

You have been called upon to prepare a legal brief on the merits of the whole matter using decided cases. Please proceed. **(15 Marks)**

2. In *Fred M'membe & 3 Ors v. The People* (1996) the indictment alleged defamation of the President contrary to section 69 of the Penal Code. The prosecution's case was that the appellants published in the Post newspaper defamatory or insulting matters concerning the President of the Republic with intent to bring him into hatred, ridicule or contempt. At the trial in the magistrate's Court the accused challenged the constitutionality of section 69 arguing that it was in conflict with Article 20 and 23 of the Constitution. The magistrate's court referred this constitutional issue to the High Court for determination. The High Court ruled that no constitutional breach had occurred. The Court ruled that freedom of expression is not absolute but subject to derogations and that section 69 is reasonably required for the sake of public order. The High Court also ruled that the accused in the court below had not shown (i) that their fundamental right to freedom of expression had been contravened and (ii) that section 69 is not reasonably justified in a democratic society. Regarding the issue whether section 69 of the Penal Code conflicts with Article 23 of the Constitution in that it is discriminatory in its effect the Court ruled that matters enumerated in clause 3 of Article 23 are exhaustive and not illustrative and that therefore section 69 is not

in conflict with Article 23. On appeal the Supreme Court agreed with the High Court, dismissed the appeal and ordered the trial in the magistrate's court to proceed.

- (i) Consider the tenor of Article 20 of the Constitution.
- (ii) Who bears the burden of proof under the permissible restrictions in Article 20(3)?
- (iii) Comment on the following statement of Ngulube CJ (as he then was) in reply to appellants' arguments that criminal libel is outdated and has no place in an open and democratic society and that section 69 violates the principle of equality before the law:

"It was also attempted by counsel for the appellants to reduce to the common ranks the central executive authority and first citizen of the country. The election of any person to the office of President, I would have thought to be self-evident, has legal and constitutional consequences, quite apart from any other result. The Constitution itself ordains that he becomes Head of State and of Government, that the executive power of the state vests in him and that he be endowed with the various matters, powers and function described in the Constitution. I do not see how it can be argued that the President should stand before the law equally with the rest of us when, for example, Article 43 grants him immunity from civil and criminal suits while he occupies that high office. If the Constitution itself makes the President not equal to everyone, how can the accused's argument be maintainable? **(15 Marks)**

3. Rights and freedoms cannot be constitutionally guaranteed in absolute terms because "the entrenchment of human rights in the Constitution is merely an attempt to strike a more or less permanent balance between the interests of the individual and those of the state". Going through the specific articles in the Constitution, particularly noting the exceptions thereto, it is to be noticed that these exceptions fall broadly into two classes. Define and distinguish these two classes. **(15 Marks)**.

4. The phrase "Reasonably justifiable in a democratic society" brings the courts into the picture, for it is they who must balance the rights of the individual against the interests of the community in order to determine if the restriction is reasonably justifiable. Using any two Zambian decided

cases discuss the interpretation of the phraseology 'Reasonably justifiable in a democratic society by the Zambia courts'. **(15 Marks)**.

5. The Zambian Government has in the last decade or so developed various mechanisms of promoting and protecting fundamental rights in Zambia. Among these mechanisms are institutional arrangements such as the Human Rights Commission and the Police Public Complaints Authority. Critically discuss the mandates of these two institutions within the context of promoting and protecting human rights outside the traditional court system. **(15 Marks)**

6. Consider the value, if any of the Directive Principles of State Policy as provided for in Part IX of the Constitution and show whether the position would be any different were they to be included in the Bill of Rights. **(15 Marks)**

7. The One-Party State era in Zambia has been said to have affected the full enjoyment of the rights provided for under the Zambian Bill of Rights as formulated under the Independence Constitution. Discuss this statement. **(15 Marks)**

END OF EXAMINATION.

THE UNIVERSITY OF ZAMBIA
School of Law

2008/9 Second Semester Final Examination

Date: Thursday 5th March 2009

Time: 09:00 – 12:00 hours

Course: Civil and Criminal Procedure (L362)

Instructions:

- 1. The question paper is divided into two parts, Part A and Part B. Please note that question 1 under each part is compulsory and carries 18 marks**
 - 2. Answer any other 2 questions from either part.**
 - 3. Time: Three (3) Hours plus five (5) minutes to read the paper**
 - 4. Each question carries 12 marks and the total mark for the exam is 60 marks**
 - 5. Students are allowed to consult the following unmarked statutes in the exam room:**
 - i. Supreme Court Act, Cap 25**
 - ii. High Court Act, Cap 27**
 - iii. Subordinate Court Act, Cap 28**
 - iv. Juveniles Act, Cap 53**
 - v. Adoption Act, Cap 54**
 - vi. Penal Code, Cap 87**
 - vii. Criminal procedure Code, Cap 88**
-

Part A Civil Procedure

Question 1A - Compulsory

You are a prominent Lusaka lawyer and you have been approached by a client one Rose Banda, trading as ZAMCOM Enterprises, who has requested that you represent her. The facts of the case are that Mrs. Rose Banda in June 2008, in a matter in which she supplied 4 Dell computers worth K3, 500,000.00 each to the Academic Office of the University of Zambia, subject to a Purchase Order dated 13th June 2008. Following which the computers were promptly delivered and accepted by the Academic Office subject to a delivery note dated 15th June 2008. However, to date Mrs. Banda has not been paid despite sending two demand letters for payment.

Being a prominent Lusaka Lawyer:

- a) Identify the appropriate mode of commencing court action and draft the endorsement for Mrs. Banda 's claim; and
- b) draft the affidavit in support to be filed together with the appropriate court process.

18 marks

Question 2A

You act for the Plaintiff James Banda in a matter before the High Court and due to non appearance of the both the Plaintiff and the Defendant Musa Mwenya, on the day on which the matter was coming up for hearing the Judge made an order to have the matter struck off the Active Cause List. You discover upon conducting a search that the matter has been struck off. In the interest of Justice advise your client the appropriate application to be made to ensure that the matter is heard on the merits and

- a) draft the summons for the application; and
- b) draft the order to be made by the court in the event that your application is granted.

12 marks

Question 3A

You are a State advocate under the Attorney Generals Chambers and you realize that the Plaintiff's in the High Court have disclosed letters passing between your office and the your client being the Ministry of Finance and National Planning, in anticipation of litigation, in their Bundles of Documents. Prepare skeleton arguments, with the aid of decided cases, to be filed in court to justify your opposition to the letters being produced.

12 Marks

Part B Criminal Procedure

Question 1B - Compulsory

Following a Preliminary Inquiry under the Criminal Procedure Code, the magistrate found the accused person with a case to answer and now transmits the case record to the High court. As the Director of Public Prosecutions:

- a) Prepare a brief to the newly appointed Judge on the procedure for transmission of case records from the court below to the High court, highlighting the purpose and potential outcomes of a Preliminary Inquiry.
- b) The accused person in the court below was charged for the offence of Rape and Aggravated Robbery. Draft the counts for the two offences, which you as DPP will incorporate in the information to be filled in the appropriate Court.

18 Marks

Question 2B

Distinguish service of court documents in civil matters from service of court documents in Criminal matters.

12 Marks

Question 3B

You have been Principal Resident Magistrate since 2000. On 30th January 2009 an accused person appeared before court on Plea. Once the charge was read out to him the accused person failed to plead and in your opinion the accused failed to plead on account that he was mute by visitation of God. A high court Judge has requested, subject to its' supervisory powers over the subordinate court, that you prepare a brief:

- a) Explaining how you proceeded with the matter and the procedure you followed as prescribed under the Criminal Procedure Code.
- b) Explaining the procedure to be followed on sentencing an accused person who pleads guilty to a charge outlining possible punishments against a convicted person who is a pregnant woman convicted of an offence carrying a mandatory sentence of Death and a convicted person who is a juvenile.

12 marks

Question 4B

Your client Jack Liswaniso has been charged with Aggravated Assault and is remanded in police custody the police have refused to release your client on police bond. However, your client will appear for plea before a magistrate on 10th march 2009.

- a) Prepare your submissions to be filled in court to support your client's application for bail ;
- b) as a Public Prosecutor you have been served with the accused person's application for bail prepare your submissions in reply to be filled in court opposing the application for bail.

12 Marks

THE END