

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2009 FIRST SEMESTER EXAMINATION

1. L 211 LEGAL PROCESS
2. L 221 LAW IN CONTRACT
3. L 231 LAW TORTS 1
4. L 241 CRIMINAL LAW 1
5. L 251 CONSTITUTIONAL LAW 1
6. L 311 LAW OF EVIDENCE
7. L 321 LAND LAW AND PROPERTY RELATIONS
8. L 331 COMMERCIAL LAW 1
9. L 341 ADMINISTRATION LAW
- 10.L 351 INTRODUCTION TO INTERNATIONAL AND REGIONAL HUMAN RIGHTS
LAW
- 11.L 411 JURISPRUDENCE
- 12.L 421 LAW OF BUSINESS ASSOCIATIONS
- 13.L 431 INTERNATIONAL LAW 1
- 14.L 441 CONFLICTS OF LAWS
- 15.L 451 INTERNATIONAL TRADE LAW



THE UNIVERSITY OF ZAMBIA

**SCHOOL OF LAW
EXAMINATIONS 2009/1**

L211 - LEGAL PROCESS

Instructions:

1. Answer 1 question from each part.
 2. Other than question 1 which carries 18 marks each question is worth 14 marks. The total mark for the Examination is 60.
 3. Time: Three (3) hours plus five (5) minutes in which to read the question paper.
 4. NO statutes may be taken into or consulted during the examination.
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PART A

Question 1

The following is an extract from a judgment. Read it carefully in its entirety.

IN THE SUPREME COURT FOR ZAMBIA SCZ JUDGMENT NO. 8 OF
1999

HOLDEN AT KABWE AND LUSAKA APPEAL NO. 107 OF 1996

(CIVIL JURISDICTION)

B E T W E E N

A.M.I. ZAMBIA LIMITED

APPELLANT

AND

PEGGY CHIBUYE

RESPONDENT

CORAM: NGULUBE. CJ., CHAILA AND MUZYAMBA, JJS

ON 4th November, 1998 and 13th April, 1999

For the Appellant: Mr. N.K. Mubonda of D.H. Kemp and Co.

For the Respondent: Mr. C.M. Ngenda of Christopher Russell and Co.

J U D G M E N T

Ngulube, CJ. Delivered the judgment of the Court.

This case concerned custody of goods for customers. ... The learned trial judge heard the evidence... the learned judge said he was resolving an issue of credibility between two sets of witnesses and accepted the evidence of the respondent and her witness. One ground of appeal argued by counsel challenged this finding of fact....The Supreme Court has evolved and constantly affirmed some definite principles when it comes to reversing a trial court's findings of fact, especially those based

on credibility. Not having had the advantage of seeing and hearing the witnesses at first hand which the trial court has, we do not lightly interfere unless it unmistakably appears that the trial court fell into error and could not have taken proper advantage of seeing and hearing the witnesses at first hand. ... We have not been given any justifiable excuse for reversing the learned trial judge and this alone resolves the appeal....

.....
.....
... Indeed, the cases of SECURICOR ZAMBIA LIMITED v WILLIAM JACKS AND CO. ZAMBIA LTD SCZ Appeal No. 24 of 1990; AILSA CRAIG FISHING CO. LTD v MALVERN FISHING CO. AND ANOTHER [1983] ALL ER 101; GEORGE MITCHELL (CHESTERHALL) LTD v FINNEY LOCK SEEDS LTD [1983] ALL ER 737 and the case of PHOTO PRODUCTION LTD v SECURICOR TRANSPORT LTD [1980] ALL ER 556 which Mr. Mubonda cited are all in point so far as they support the legal proposition under discussion.

In truth, there are no grounds for interfering with the judgment below. The appeal is dismissed, with costs to be taxed if not agreed.

.....
M.M.S.W NGULUBE
CHIEF JUSTICE

.....
M.S. CHAILA
SUPREME COURT JUDGE

.....
W.M. MUZYAMBA
SUPREME COURT JUDGE

List or present in tabular form the fundamental lessons about the structure of our legal system that are evident from the format of the judgment. Each lesson must be explained briefly and justified.

PART B

Question 2

Write Short Notes on two of the following:

- a. Civil law
- b. Islamic law
- c. Roman Dutch law

Question 3

You are a magistrate in the Subordinate Court of the First Class. Before you, is a case on appeal from the Local Court: According to the record of appeal, Wellread Lawyer, the appellant is challenging the decision of the Local Court rendered in accordance with the parties' customary law. The grounds of appeal are that the lower Court misdirected itself when it applied the said customary rule.

Provide a reasoned judgment that upholds the Local Court. Your judgment should deal separately with each of the following:

- 1. Constitutional and statutory status of customary law**
- 2. The dual standard of justice**

PART C

Question 4

You come across the following statement in your legal process textbook.

“Law is made by the people for all the people”

Discuss the statement

Question 5

UNZASU is planning a class boycott to protest against a decision made by the School of Law Board of Studies to enforce the Progression Regulations in the School. The Regulations do not permit a student who has not cleared all the courses required in a particular year of study to proceed to the next year of study. The School Management writes to UNZASU advising that all law students that participate in the boycott will be expelled. UNZASU appeals to Senate claiming that: a. The progression rules should not be applied because

their application will result in injustice, as affected students will lose their GRZ sponsorship and b. Class boycott is a legitimate form of protest. Senate upholds the decision of the School stating that justice demands that a. A rule of law be applied consistently and impartially and b. All disputes are resolved through legal channels.

In a legal opinion rendered to UNZASU state which position is correct.

PART D

Question 6

In *Samuel Miyanda v Raymond Handahu* SCZ Judgment No. 5 of 1994 Ngulube CJ stated as follows:

The fundamental rule of interpretation of all enactment to which all other rules are subordinate is that they should be construed according to the intent of Parliament, which passed the law.

State:

- a. What facts in the case gave rise to the statement and**
- b. Whether this is a complete and accurate assessment of the process of interpreting statutes?**

Question 7

Outline and justify the critical elements that constitute a case summary.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER FINAL EXAMINATIONS – OCTOBER 2009

L 231 – LAW TORTS 1

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

ANSWER : QUESTION ONE AND ANY THREE OTHER QUESTIONS

ALL QUESTIONS CARRY EQUAL MARKS

QUESTION ONE

Inonge Mulenga and her boyfriend Jason Sangwapo are third year students in the School of Agriculture at UNZA. Last week on Saturday the 17th of October 2009 they went to attend the wedding of Inonge's younger sister at Country Club in the Lilayi area. Being a close family member, Inonge had unlimited access to food and alcoholic beverages. The two students who were usually broke at campus took so much alcohol such that by 20:00 hours they were both in a very advanced state of inebriation. At 20:30 hours Inonge's cousin gave them a ride into town centre where they got on to a mini-bus with a view of going to campus. As soon as they sat down they both fell into deep sleep. They were startled to be woken up by the Conductor only to find themselves at Luangwa Bridge and the time was 01:00 hours. The last bus from Luangwa Bridge to Lusaka was leaving at 01:15.

Apparently because of their drunkenness they had got into a bus going to Luangwa Bridge. The Conductor refused to allow them off the bus unless they paid the full Lusaka- Luangwa Bridge fare. They refused to pay and the two were locked in the bus where they spent the night. They are so furious they want to sue someone. Advise them citing appropriate authorities.

QUESTION TWO

Mumenyeni Zulu is a secondary school teacher at Kabulonga Boys and he loves game meat. On Friday 16th October 2009 he and his fellow teacher Bilharzia Phiri went to Kaliloji Game Ranch in Chisamba owned by a South African farmer, Oscar van der Merwer. They each paid the sum of K500,000 for a hunting permit to enable them hunt, kill and take a maximum of four lenchwe each from the game ranch. The notice on the entrance to the game area provided that that anyone found in the game area after 17:00 hours will be prosecuted for trespassing.

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

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By 16:30 none of the two had managed to shoot any of the elusive lenchwe. By some stroke of luck , at precisely 16"55 hours Bilharzia shot one lenchwe which went and fell in a thick thicket full of thorns and they started searching for the carcass. By 18:00 hours they were still searching. At 19:00 hours van der Merwer with his security guards armed with rifles and dogs came to evict them forcibly stating that from 17:00 hours onwards the two hunters had become trespassers. The two refused to leave until they got their meat. What are the legal issues in this matter?

QUESTION THREE

Jefferson Bwalya Simbotwe popularly known as JSB was well known on campus as a gate crasher. He is also the ruling party's youth secretary on campus. His philosophy was to pay nothing for a drink. On Friday 16th October 2009 he heard from reliable sources that the victorious newly elected Member of Parliament for Lusaka East popularly known as MGB would be holding a victory party at his residence in Kalundu opposite UNZA. Because of similarity in build with MGB Simbotwe gate-crashed easily and started masquerading as the young brother to MGB. In the process he got so drunk that he forgot that he was at an opposition party function and started denouncing the opposition party. He was severely beaten up and lost consciousness. He was airlifted by bouncers and thrown over the fence into the neighbour's yard which happened to be the Mexican Ambassador's residence. The Ambassador wants to sue Simbotwe. Advise.

QUESTION FOUR

Reckless Tambatamba and his best friend Timwenge Tabene were out hunting birds at Timwenge's dad's farm in New Kasama. Reckless was using catapults while Timwenge was using an air gun. Soon they spotted a quail seated on the 3 metre high wall fence and they both took aim. They both missed. Unknown to both of them the neighbour was having a braai some fifty metres from the fence. Because of the wall fence the two friends could not see what was going on in the neighbour's yard. Unfortunately the stone from Reckless's catapult hit the neighbour's daughter on the eye and she lost the eye. The neighbour, Colonel Lyempe wants to sue the neighbour. Advise.

QUESTION FIVE

Whilst in the Lusaka City Council public library in town centre, Magistrate Ken Mwendapole saw a wallet on the floor. In the purse was K2.5 million cash and nothing else. The only other person in the library at the time, which was almost closing time, was the Librarian, Mwanjipaya Chileshe. The Magistrate asked Mwanjipaya if she possibly knew who the owner might be. Mwanjipaya replied that she could not know as the library was open to the public. Thereupon the Magistrate gave Mwanjipaya K500,000 from the wallet and promptly left for Cell City to buy himself a Samsung U700 cell phone. Two days later a ZIALE student went to the Library and asked Mwanjipaya if she had seen a wallet to which she replied that

“yes, Magistrate Mwendapole had picked a wallet”. The student wants his money back but the Magistrate has refused. Advise on the legal issues arising.

QUESTION SIX

Preamble Maningi was on a very long que for petrol at BP Filling station in the industrial area. Four hours later he managed to get 20 litres of petrol and wanted to rush back to the business as he had lost so much by staying so long in the que due to the current fuel shortage. As Maningi was about to pay, the Petrol Attendant, Typhoid Mwenzuma, received a call on his cell phone. Mwenzuma was on the phone for so long that motorists became angry and started hooting. Fed up with the delay Maningi decided to drive off. Sensing that Maningi was about to evade payment Typhoid rushed to the driver’s window and slapped Maningi hard on the face. Maningi together with his conductor who were already upset flew into a rage and hit Typhoid on the head with a heavy wheel spanner. Typhoid sustained a deep cut on his skull and lost both speech and sight. His employer has refused to compensate him saying he provoked the mini bus driver.

QUESTION SEVEN

Due to the current serious fuel shortage the country is experiencing, Jazzman Mbasela bought four 20 litre plastic containers of fuel and put them in his garage next to his neighbour. He meant to share one container with his neighbour. Unknown to Jazzman a rat had eaten into one of the containers causing the petrol to flow out slowly. Yesterday afternoon it was so hot in the garage that the petrol caught fire and spread to the neighbour's yard. The neighbour wants to sue. Advise.

Oooo END OF EXAMINATION oooo

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

2009 SEMESTER 1 EXAMINATIONS

L241, CRIMINAL LAW I, October 2009

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. The total marks for the whole examination is 60 marks.

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

PART A

QUESTION ONE (Compulsory question) (18 marks)

Mubita, Hamoonga, Chilufya, Phiri and Mulemena set out to go and break into and steal from the Chelstone Shoprite Supermarket. Phiri was the 'Commander' of the operation, who expressly ordered Chilufya the security man who had the AK 47 gun to kill all the three elderly watchmen at the shop. All the participants heard this order which Phiri gave to Chilufya.

The five men shared the roles to be played at the Shoprite store during the planned robbery operation. Mubita was the person who actually entered the shop and hauled goods out and handed them to Chilufya, who took them to the

waiting lorry driven by Mulemena. Hamoonga's role was to hold the ladder which Mubita used to climb over the wall fence to get into the shop yard and to break into the store itself. The person who used the ladder first was Chilufya.

He went into the shop-yard to shoot dead the three security guards. After Chilufya killed the guards, Mubita then broke into the shop and stole the goods.

The sound of the AK 47 gun prompted the watchmen at the other two shops nearby to call the 'flying squad' robbery – busters police, who rounded up all the five men and subsequently charged them with Aggravated robbery, under section 294 (2) (a) of the Penal code, and of murder under section 200 of the Penal Code. Bearing in mind the facts given above, discuss the doctrine of common design and the applicable principals of sentencing. Cite at least two decided cases in support of your answer.

PART B

QUESTION TWO (14 Marks)

Some crimes have the element of 'direct intent' in them, while others have the element of 'basic intent'. Discuss both these expressions and name and explain two offences of 'basic intent', and two offences of direct intent.

QUESTION THREE (14 Marks)

Insanity and intoxication are related in some way. Discuss their respective elements and state the relationship between these two defences. Cite one decided cases for each defence.

QUESTION FOUR (14 Marks)

The object of putting up a defence by an accused person at the trial is to negative *mens rea* on his part at the time of the alleged offence. Diminished Responsibility is one of the defences in Criminal Law. Discuss the main distinction between diminished responsibility and insanity. Support your answer with decided case.

QUESTION FIVE (14 Marks)

Discuss the defence of self defence. In the course of discussing its elements comment on the principle of the duty of the threatened person to retreat from the threat'. Cite one case in which this 'duty to retreat' was discussed.

QUESTION SIX (14 Marks)

Attempted crimes are offences which belong to the inchoate class of offences, and which include conspiracies and incitement. What is the main factor which a trial court considers before it determines whether an attempted crime has been committed? In the light of your answer discuss the elements of attempted murder and the penalty under Zambian Criminal Law.

QUESTION SEVEN (14 marks)

Discuss the principle of 'causation' in criminal cases. In the course of your answer discuss the rule of '*Nova causa interveniens*,' and cite one authority to back up your answer.

END OF EXAMINATION



**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

L311 LAW OF EVIDENCE

2009 SEMESTER 1 EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

L311 LAW OF EVIDENCE

2009 SEMESTER 1 EXAMINATION

DATE: 21ST OCTOBER, 2009

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

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

QUESTION 1 IS COMPULSORY

QUESTION 1 CARRIES 18 MARKS AND THE OTHERS 14 MARKS EACH.

TOTAL MARKS = 60

PART 1

QUESTION 1

On 15th July, 2006 there was an agricultural show at Lusitu. Saasa (Accused number 1) a shop owner, sent his daughter Wesu 21, (Complainant) to go there and sell some groceries. In the evening of that day Saasa received information that Wesu did not sell anything. Around 20:00 hours there was a power cut and he went behind the shop to check on dinner, and his wife Nakoyo (Accused number 2) told him that Wesu (Complainant, who is also her step daughter) was the one in charge of cooking that evening, but that

she was not around. On 16th July Saasa wanted Wesu to go and fetch bread from the shop, but Wesu was again, not around. Saasa told his wife Nakoyo to inform him as soon as Wesu got home. On 18th July, ^{Saasa} found a sack, a pen and a K500.00 note behind the house. He realized someone had slept there. Saasa was upset, on finding out that it was his daughter Wesu. Wesu pleaded with him so that the story is hushed in the interest of her continuing education. She already had a child from an earlier pregnancy and had once dropped out of school because of it.

Saasa conceded to this and proceeded to Lusaka to purchase some merchandise. On return, he was arrested for rape of Wesu his daughter with the help of Nakoyo, the step mother. At the trial a medical report obtained 2 days after the alleged rape was admitted in evidence, together with a pair of torn pants. The prosecution submitted that the torn pants corroborated Wesu's testimony that she was raped and that there was a struggle. Both Saasa and Nakoyo were sentenced to 15 years for the rape of Wesu. The Judge in passing sentence said

“the evidence and the circumstances fall short of corroboration in the strict sense. But the evidence of the prosecution has not been manifestly discredited by the defence. But on the other hand, Accused 1 admitted detesting his daughter's flirting with many men. But there is the torn pant....”

Advise Saasa and Nakoyo on the chances of success of their appeal to the Supreme Court.

[18 marks]

PART B

QUESTION 2

The right against self-incrimination inevitably strikes against “one of the fundamental tenets of a fair trial”

Discuss

[14 marks]

QUESTION 3

The accused, Chona, was charged with indecently assaulting a twelve year old girl, Dora, who testified against him on Oath. Her nine (9) year old brother Tana, gave unsworn evidence to the same effect.

Discuss the law of evidence of a child and advise Chona accordingly.

[14 marks]

QUESTION 4

Mambazo is charged with robbery, largely on the evidence of Foloko, who made a statement to the police that he had seen Mambazo commit the offence. Foloko also picked out Mambazo at an identification parade. At the trial Foloko states that he saw a man commit the robbery but that this was not Mambazo.

FOLOKO'S

Discuss the implication of Mambazo's evidence.

[14 marks]

PART C

QUESTION 5

In *Liswaniso v The People* (1976) ZR 277 the Applicant was alleged to have corruptly received money as consideration for the release of a car he had impounded. The police arranged with the owner of the car to give him the money he had asked for. Soon after the transaction they searched the Applicant's house and found the money. The search warrant they used was illegally obtained and Liswaniso appealed against his conviction.

Advise him.

[14 marks]

QUESTION 6

Sunga is charged with murdering Lulu his fiancée. His defence is that he was showing her the new garden scythe when he accidentally tripped and fell, whereby the scythe cut her jugular vein. He further alleges that he has in the recent past had black-outs, and pleads this as the reason he could have lost control of the scythe.

Comment on

(a) where the burden of proof lies;

[8 marks]

(b) the standard of proof

[6 marks]

QUESTION 7

“As a general rule, ‘without prejudice’ correspondence is inadmissible, but in the case of settlement the issue for determination may demand the production of such correspondence” *Lusaka West Development Company and B.S. K. Chiti (Receiver) and ZSIC v Turnkey Properties Limited* 1990/1992 ZR. 1.

Discuss the rule.

[14 marks]

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THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2009/2010 SEMESTER 1 FINAL EXAMINATIONS
OCTOBER 2009
L321 LAND LAW AND PROPERTY RELATIONS

INSTRUCTIONS:

1. ANSWER: FOUR (4) QUESTIONS-ONE QUESTION 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 AUTHORITIES IS RECOMMENDED
-

PART ONE

1. (a) The rights and obligations of the landlord and tenant are determined by the terms of the lease, including terms implied by the common law and by statute. However, certain rights and obligations are regarded as necessary incidents of the landlord and tenant relationship so that covenants dealing with those rights and obligations are automatically implied into every lease.

With the aid of case law discuss the above statement.

[9 MARKS]

(b) It has commonly been the ambition of land owners to dictate to posterity how their land is to devolve in the future, and so to fetter the powers of alienation of those to whom they may give it; and it has always been the purpose of the courts, as a matter of public policy, to confine such settlements within narrow limits and to frustrate them when they attempt to reach too far into the future.

Discuss the above statement taking into account the current state of the law in Zambia.

[9 MARKS]

PART TWO

2. (a) The right to occupy land in return for payment is consistent with the grant of a lease or a (contractual) license. However, the consequences of the two alternatives are different.

With the aid of case law discuss the above statement.

[9 MARKS]

(b) Discuss the distinction between a joint tenancy and tenancy in common.

[5 MARKS]

3. (a) No satisfactory definition of an easement has been formulated. Where it is alleged that an easement has been acquired, the question whether the alleged right is capable of constituting an easement is addressed by reference to what are termed the essential characteristics of easements.

With the aid of case law discuss the above statement.

[9 MARKS]

(b) Discuss the obligations and rights of a riparian owner at common law. How has statute altered the same in Zambia.

[5 MARKS]

PART THREE

4. (a) Because of the deficiencies of the common law as administered in early common law courts, a body of law known as equity was developed by the court of Chancery giving a new range of rights and remedies. Discuss the contribution of equity to the development of the modern law of real property.

[9 MARKS]

(b) Discuss the ways in which a joint tenancy may be converted into a tenancy in common.

[5 MARKS]

5. (I) In 2005 Imikedu borrowed K20, 000, 000 from Sipopa secured by a legal mortgage of Imikedu's farm situate at Namushekede in Mongu. Imikedu has now fallen into arrears with his payments

(a) Explain in what circumstances Sipopa could sell the mortgaged property

(b) If in the exercise of any power of sale Sipopa sells the mortgaged property at less than its open market value, would Imikendu have any remedy against

(i) Sipopa

(ii) The purchaser from Sipopa

[9 MARKS]

(c) How must Sipopa apply the proceeds of any such sale and what special precautions must he take in doing so.

(II) Discuss the decision in Hunt vs. Luck (1902) 1 Ch 426

[5 MARKS]

PART FOUR

6. (a) John Phiri is studying law at Zambia Open University. You happen to meet him at the Student Centre and he is fascinated by your command of legal issues. He tells you that he read somewhere that land is capable of sustaining a multiplicity of interests or relationships. Explain to him.

[8 MARKS]

- (b) Discuss implied grant as a method of acquisition of an easement.

[6 MARKS]

7. (a) Kaputungu is the owner of a commercial property Plot 80 Chavuma. In January 2009 Kaputungu was involved in discussions and negotiations with Kuliye where it was envisaged that Kuliye would rent Kaputungu's property. Kuliye inspected the property, took photographs and later informed Kaputungu what alterations and modifications he wanted for the property to meet his requirements. Kaputungu undertook such alterations and renovations. Kuliye apparently changed his mind; he did not sign any lease and did not take possession of the property which Kaputungu had held vacant for his anticipated occupation.

Kaputungu has this morning called on you for legal advice on what has transpired. Advise him.

[9 MARKS]

- (b) Discuss the legal nature of a *profit a prendre*.

[5 MARKS]

End of Examination

PART FOUR

6. (a) John Phiri is studying law at Zambia Open University. You happen to meet him at the Student Centre and he is fascinated by your command of legal issues. He tells you that he read somewhere that land is capable of sustaining a multiplicity of interests or relationships. Explain to him.

[8 MARKS]

- (b) Discuss implied grant as a method of acquisition of an easement.

[6 MARKS]

7. (a) Kaputungu is the owner of a commercial property Plot 80 Chavuma. In January 2009 Kaputungu was involved in discussions and negotiations with Kuliye where it was envisaged that Kuliye would rent Kaputungu's property. Kuliye inspected the property, took photographs and later informed Kaputungu what alterations and modifications he wanted for the property to meet his requirements. Kaputungu undertook such alterations and renovations. Kuliye apparently changed his mind; he did not sign any lease and did not take possession of the property which Kaputungu had held vacant for his anticipated occupation.

Kaputungu has this morning called on you for legal advice on what has transpired. Advise him.

[9 MARKS]

- (b) Discuss the legal nature of a *profit a prendre*.

[5 MARKS]

End of Examination

The University of Zambia

School of Law

2009/2010 Academic Year First Semester Examinations

Commercial Law I- L331

Instructions

1. Maximum time allowed is three (3) hours plus five (5) minutes to read through the paper.
 2. Answer four (4) questions, two (2) from each part and all questions carry equal marks.
 3. Answer all questions in full.
 3. No personal statutes and or texts are allowed into the Examination Hall. The required statutes for this examination are provided
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PART 1

Question One

Penelope Limited engages Andrew to be its agent to sale musical instruments on its behalf in the Woodsfield business area. The contract provides that Andrew shall exclusively deal in and sell instruments supplied by Penelope Limited.

In April 2009, Andrew was approached by the musical director of the local church, the Woodsfield Saviour Army who wanted to buy a complete set of musical instruments to be used during a two weeks musical festival.

Andrew does not have a complete set and decides to buy one base guitar and one lead guitar from a music shop at the University of Woodsfield so as to meet his contractual obligation towards the Woodsfield Saviour Army. Unknown to Andrew, the two guitars he bought from the University of Woodsfield music shop were only demonstration instruments and could not withstand the pressure of being used for the two weeks music festival.

The Woodsfield Saviour Army writes to Penelope Limited demanding US\$7,000.00 being the purchase price for the guitars.

The CEO of Penelope Limited is infuriated when he learns that Andrew had purchased instruments from the University of Woodsfield music shop and immediately terminates his agency contract. Andrew's reaction says he does not care about the agency contract because he does not also want to continue working with a company that does not appreciate initiative. His only demand is for the payment of US\$9,000.00 being the outstanding agency fees due to him.

Fully advise Penelope Limited.

15 Marks

Question Two

George runs a car hire company with a fleet of over 70 vehicles. He has engaged Motor City Limited, a registered motor vehicle dealer and repairer as its agent to sell off his older vehicles and service his fleet of cars.

On 13 September, 2009, George dropped one of his cars at Motor City with express instructions that it be serviced. He carelessly forgot the car's registration document in the unlocked glove compartment. One of the employees of Motor City mistakenly believed that the motor vehicle had been brought in for sale and he sells it to Peter at its real value of US\$17,000.

Despite the fact that the car is registered in his name, George obtained it on hire purchase and had not been given the option to purchase it and therefore the vehicle was still property of the hirer.

George is annoyed with what Motor City has done and approaches you for advice.

Fully advise him.

15 Marks

Question Three

Patel has 150 containers of 5 litre groundnuts cooking oil lying in Joshua's warehouse. On 15 April, 2009, he contracted to sell to Peter "100 containers of groundnuts cooking oil now lying in Joshua's warehouse." On receiving the cheque on 20 April, 2009, Patel gave Peter the invoice and written delivery authority to pick the cooking oil from Joshua's warehouse. On 21 April, Patel sent Peter a letter in which he stated that property in the cooking oil would not pass until after the cheque had cleared. The cheque cleared on 27 April, 2009. Peter, though entitled to collect the cooking oil on 20 April 2009, only went to collect the cooking oil on 28 April, 2009.

Unknown to Patel and Peter, Joshua's warehouse caught fire on 25 April, 2009 and all its contents including Patel's 150 containers of cooking oil were destroyed.

Fully advise Peter.

15 Marks

Question 4

Abraham is a well-known dealer in antique vases. On 1 February, 2009 he went into China Galore and asked the shop keeper if they had anything special. The shop keeper showed him a vase which he described as “a perfect shing vase” which after examining it, Abraham agreed to buy for £3,000 and took the vase with him. Abraham was very pleased with the purchase because he had a customer who would pay handsomely for such a vase.

On 12 February, 2009, Abraham left the vase with his customer to see if he would be interested in buying it for £5,000. The vase was returned two days later because it emerged that it was not a genuine shing vase and that it was in fact worth less than £200. Abraham decided to keep the vase for his own use. A week later, during a dinner party at his place, Abraham discovered that the vase which he had used to display a bunch of flowers was leaking. Further, one of the guests at the dinner recognised the vase as his having been stolen from him on 1 January, 2009 when thieves broke into his house.

Fully advise Abraham.

15 Marks

PART 2

Question 5

Answer both parts of the question.

- (a) Analyse the extent to which the Zambian Hire Purchase Act captures the concept of hire purchase at common law.
- (b) Briefly described the principle of law enunciated in the case of Priest -vs- Last.

15 Marks

Question 6

Compare and contrast all of the following terms:

- (a) Apparent authority and implied actual authority;

- (b) Hire purchase and lease financing; and
- (c) Agency by estoppel and agency by ratification.

15 Marks

Question 7

The law of agency flies in the face of the age-old principle of privity to contract. It is either that agency is an exception to the principle of privity or that privity is an exception to the principle of agency. Discuss the apparent conflict of the two principles and the relevance of the said conflict to commerce.

15 Marks

End of Examination

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
FIRST SEMESTER FINAL EXAMINATION
OCTOBER 2009
L341 ADMINISTRATIVE LAW

- INSTRUCTIONS:** (1) ANSWER FOUR QUESTIONS
- (2) QUESTION ONE IS COMPULSORY
- (3) THERE IS PROVISION FOR FIVE MINUTES TO READ
- THE
- QUESTIONS
- (4) TIME: THREE HOURS
- (5) QUESTION ONE CARRIES 21 MARKS.
- (6) ALL OTHER QUESTIONS CARRY 13 MARKS.
- TOTAL MARKS =60
- NO STATUTES PERMITTED
-

PART A

QUESTION ONE

Mr Kabwekamukuba, is a resident of Mulungushi area in Kabwe and currently works for Lunsefwa Hydro Power Station, a company previously owned by ZCCM. He is employed as a control engineer and his work involves monitoring the wheeling of power into the national grid under the supervision of the power station manager, who apparently has a dislike for Mr Kabwekamukuba. Mr Mwalusaka is a control engineer at the National Control Centre of ZESCO in Lusaka, a parastatal company under the Ministry of Energy and Water Development, where he is entrusted with the responsibility of monitoring Zambia's national grid and interconnectors to other countries in the region. His duties include monitoring power supply coming from power stations outside the ZESCO system such as Lunsefwa Hydro Power Station and in fact works closely with Mr Kabwekamukuba. He is answerable to the Director of Generation and Transmission whom Mr Mwalusaka once punished while at secondary school. Though the Director claims to have closed that chapter, his unjustified outbursts at Mr Mwalusaka betray his claims.

One day after a heavy thunderstorm, Lunsefwa Hydro Power Station lost one of its units causing serious tripping at various substations on the national grid and consequently causing blackouts both within and outside Zambia. The control engineers on duty on this fateful day were Mr Kabwekamukuba at Lunsefwa Hydro Power Station and Mr Mwalusaka at the National Control Centre. The two were immediately suspended by their respective superiors for failing to protect the system and thereby causing outages. The two officers were not given an opportunity to exculpate themselves and are currently facing possible demotions from their respective employers.

The two feel aggrieved and mistreated and have notified their respective employers of their intentions to report the matters to the Commission for Investigations so that their superiors can be made to account. Their employers have indicated that they will challenge the complaints. Advise the two

employees individually and their respective employers on the prospects of succeeding in each case.

(21 MARKS)

PART B

QUESTION TWO

Historically the attitude of the courts towards executive administrative discretion was that of non-interference. However, this attitude has since changed. Illustrate the shift in attitude by the courts using the cases of **R V Brixton Prison Governor Exp. Soblen 2 QB** and **Liverside V Anderson A.C.**

(13Marks).

QUESTION THREE

"The use of that adjective (unfettered), even in an Act of Parliament can do nothing to unfetter the control which the judiciary have over the executive. Namely, that in exercising their powers, the latter must act lawfully and that it is a matter to be determined by looking at the Act and scope and object in conferring a discretion upon the Minister rather than by use of adjectives".

Per Lord Upjohn in **Padfield v Minister of Agriculture, Fisheries and Food 1968 A.C.**

You are a State Advocate in the Attorney General's Chambers and you have been asked to prepare an explanatory brief for the Minister of Home Affairs who is not convinced that the above statement contained in an earlier legal opinion rendered by the Chambers is tenable.

(13 Marks).

QUESTION FOUR

Article 62 of the Constitution provides that:

"The legislative power of the Republic of Zambia shall vest in Parliament which shall consist of the President and the National Assembly"

Article 78(1) of the Constitution provides that:

"Subject to the provisions of this Constitution, the legislative power of Parliament shall be exercised by Bills passed by the National Assembly and assented to by the President"

Article 80(1) provides that:

"Nothing in Article 62 shall prevent Parliament from conferring on any person or authority power to make statutory instruments"

You are a legislative draftsman in the Attorney General's Chambers and you have before you a legislative Cabinet Memorandum proposing to repeal Article 80 of the Constitution. Kindly render a professional opinion on the implications of repealing Article 80 of the Constitution from an Administrative Law perspective.

(13 MARKS).

QUESTION FIVE

It can be argued from a historical perspective that Administrative Law in Zambia has always been influenced by the political and economic policies pursued by Government at different epochs of the country's history. Explain this statement by using the policies pursued by the UNIP Government in the Second Republic (1972-1991).

(13 MARKS).

QUESTION SIX

One of the attributes of the concept of rule of law as expounded by Professor A.V. Dicey is that equality before the law or the equal subjection of all classes of citizens to the ordinary law of the land administered by the ordinary courts of law. In essence no one is above the law. Presidents, ministers and other people holding high public office are to be treated in the same manner as commoners.

Section 13(1) of the Parliamentary and Ministerial Code of Conduct Act Chapter 16 of the Laws of Zambia provides.....An allegation that a Member has breached Part II may be made to the Chief Justice by any person, in writing giving particulars of the breaches or breaches alleged, signed by the complainant and giving the complainant's name and address. Subsection (3) provides that "the Chief Justice shall notify the President and the Speaker of the allegation and shall appoint a tribunal.....". How do you reconcile these provisions with the equality attribute of being amenable to the same courts.

(13 MARKS).

QUESTION SEVEN

The Complete Separation of Powers is said to be idealistic. Show how administrative law attests to this proposition.

(13 MARKS).

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

SEMESTER 2009/1 EXAMINATION

L351 INTRODUCTION TO INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

Instructions:

- a) Question one is compulsory and carries 21 marks.
- b) Students must answer one question from each of the other sections. Each question carries 13 marks
- c) You have 5 minutes to read through the paper and three hours in which to answer four questions
- d) Use of statutes is not permitted for this examination
- e) Examination mark is 60

Section A COMPULSORY

- 1 In the introductory comments to his book "*An Introduction to Human Rights and International Humanitarian Law*" on page xi, Carlson Anyangwe states that "the idea of human worth and dignity has always existed in all human societies. The works of sages, prophets, philosophers, poets and story tellers from different nations and civilizations, going back to ancient times attest to this fact. The struggle for human rights has a long and checkered history precisely because it is all about the need to protect the individual against the abuse of power by the monarch, the tyrant or the state."

Discuss the evolution of modern day human rights.

Section B

- 2 Protocol Number 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms states that "the court may receive applications from any person, non-governmental organization or group of individuals claiming to be victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right".

Compare and contrast the human rights implementing mechanisms under the European and American systems.

- 3 The American Court of Human Rights has extensively discussed the principle of exhaustion of domestic remedies for a case to be admissible. In the case of *Saul Godinez Cruz Vs Honduras (1986 1/A court 26th June, 1987)*, the court

held inter alia that “ the state claiming non-exhaustion of domestic remedies has an obligation to prove that domestic remedies remain to be exhausted and that they are effective”.

With the help of relevant case law to illustrate the point, discuss in detail the principle of exhaustion of domestic or local remedies.

Section C

- 4 The American Declaration on the Rights and Duties of Man states in its Preamble that “the fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, the duties express the dignity of that liberty.”

Critically discuss this statement focusing on the duties imposed upon an individual in the African Charter on Human and Peoples Rights.

- 5 In the case of *The Social and Economic Rights Action Center and the Centre for Economic and Social Rights Vs Nigeria Comm 155/96*, the African commission stated inter alia as follows: “clearly, collective rights, environmental rights and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective.”

Discuss the human rights implementing mechanisms under the African regional human rights system.

Section D

- 6 The creation of Regional Human Rights systems was spirited by a whole range of reasons. Proponents of the systems argue that they are critical in contemporary human rights development. Critics on the other hand argue that the regional systems are unnecessary. Discuss

- 7 Carlson Anyangwe in his book “*An Introduction to Human Rights and International Humanitarian Law on page 19*” states that human rights represent a set of rules whereby government is held accountable to the ruled.”

Critically discuss the classification and characteristics of human rights

End of Examination

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

DEFERRED AND SUPPLEMENTARY (FIRST SEMESTER) EXAMINATION
PAPER ON 7th DECEMBER, 2009

L411: JURISPRUDENCE
(CLASSICAL AND TRADITIONAL THEORIES OF JURISPRUDENCE)

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

INSTRUCTIONS

1. Statutes are allowed in the examination room.
 2. There are four Parts to this Paper. Answer Question **ONE** which is compulsory and **ONE** question each from each Section.
-

SECTION A

QUESTION 1

“All definitions or characteristics of law veer between two extreme positions: One extreme emphasizes the coercive character; the other lays stress on the social acceptance.....
However, the differences between these two approaches are relative rather than absolute”

W. Friedman , **Legal Theory** Fifth Ed. at pp14 and 15

Discuss the Concept of Law

(18 marks)

SECTION B

QUESTION 2

Discuss jural relations in Hohfeld's scheme of rights.

(14 marks)

QUESTION 3

Discuss the scheme of rights in the following instances:

- (a) The owner of land obstructs the flow of underground water thereby interfering with the use of water by the neighbour on the adjacent land.
- (b) A non parishioner is invited to a church service where his friend's son is to receive the sacrament of baptism. He enters the church but before the baptism ceremony starts he is ejected on instructions of Police Constable Nduna who said he is the man the Police have been looking for. It turned out that he is not the man Police were looking for.
- (c) A is a registered voter in a Constituency and on the day of the election he is misled by B a member of a different political from that of A that elections have been postponed when in fact not. A fails to vote

(14 marks)

SECTION C

QUESTION 4

Discuss custom and morality as sources of law

(14 marks)

QUESTION 5

Welsh has concluded that a Corporation can be indicted and convicted depending on 'the nature of the charge, the relative position of the officer or agent, and the other relevant facts and circumstances of the case'

R. S. Welsh, 62 LQ. R (1946) 345 – an authoritative survey

Discuss the impact of corporate personality on criminal liability.

(14 marks)

SECTION D

QUESTION 6

- i) What is meant by the right to use, right to security, transmissibility and absence of term as incidents of ownership.

(7 marks)

- ii) In whom does possession vest

- a) Between bailee and bailor
- b) Owner and Finder
- c) Finder and Stranger
- d) Occupier and Finder

(7 marks)

QUESTION 7

Compare the concepts of Ownership and Possession.



L 421: LAW OF BUSINESS ASSOCIATIONS

EXAMINATION DATE: 20 OCTOBER 2009

TIME: 3 HOURS plus 5 MINUTES READING TIME

INSTRUCTIONS TO ALL CANDIDATES

- Answer the **COMPULSORY** Question and any other three questions. You must therefore answer a total of four questions. Each questions carries equal marks. The total mark for the examination is 60.
- Substantiate your answers with reference to appropriate authority.
- You are **not** permitted to bring any Statutes into this examination.
- Begin each answer on a fresh sheet of paper.
- Write clearly and legibly.

COMPULSORY QUESTION- QUESTION One

(a) *Pothier*, in attempting to evaluate the essential requirement of “joint benefit of the parties” states that there should be a common interest. Discuss what “common interest” entails.

[6 Marks]

(b) Jack, Mark, Mary and Cathy decide to form a partnership for agricultural and farming purposes. In their agreement, they decide the following:

- That Mark will have express authority regarding transactions with third parties.
- That Mary and Cathy are expressly excluded from dealing with any third parties if the value of the transaction exceeds K20 million.

Mark, acting in pursuance of the express authority that has been Given to him concludes a contract on behalf of the partnership With Sunshine Company Limited for Sports equipment worth a Total of K30 million. The company delivers, but the partnership Refuse to settle the debt.

Meanwhile, Mary, acting on behalf of the partnership, despite The restrictions imposed on her as reflected in the partnership Agreement concludes a contract with Bright Star Company Ltd For the purchase of farming implements and fertilizers worth a Total value of K30 Million.

Cathy, also acting on behalf of the partnership, concludes a Contract with Dragon Supplies also for the purchase of Sports Equipment that amounts to K25 million.

Jack, in the meantime, also acting on behalf of the partnership, Purchases a speedboat that amounts to K60 million.

Carefully, analyse, in each of the following transactions whether The partnership is liable.

[9 Marks]

QUESTION Two.

- (a) Briefly explain *any three naturalia* of a partnership [6 Marks]
- (b) After the dissolution of a partnership between Bubaala and John, Bubaala purchases some cattle from Ben in the name of the Dissolved partnership. Ben, did not receive notice of the Partnership's dissolution and was still under the impression that The partnership was in existence because Bubaala had previously Contracted with Ben in the name of the partnership. Consider Bubaala's liability to Ben. [9 Marks]

TOTAL: 15 MARKS

QUESTION Three

- (a) Explain how a partnership could incur liability to a contract with a third party by means of ratification. [5 Marks]
- (b) A partnership of which Richard is a member, is formed for the purpose of prospecting for emeralds and acquiring properties that had emerald deposits. In furtherance of this partnership objective, Richard acquires options on certain pieces of land that includes "Prospect Farm" for the partnership, and he then carried on prospecting operations on them. During the course of these activities, Richard discovers emeralds on a farm which he thinks is "Prospect Farm" but is in fact the adjacent farm, "Bloomfields Farm". Richard does not disclose this discovery to his partners and then proceeds to secure 'discovery rights' for himself on "Bloomfields Farm". Fully explain whether Richard has acted properly under the circumstances. [10 Marks]

QUESTION Four

- (a) Mapalo, Ndanji and Kalunga establish a partnership. Each makes a contribution in terms of the agreement, and they also agree to share the profits amongst themselves. Mapalo is a medical doctor by profession. As the partnership accrues assets, Mapalo discreetly removes a CAT Scan machine that belongs to the partnership and uses it for his own purposes. During the course of using the CAT Scan in his office, the machine breaks down and cannot be repaired. Mapalo claims that he intended to tell the partners of the need to use the CAT Scan and that it was an emergency in which time was of the essence. Ndanji and Kalunga, who are also medical doctors, approach you for advice. Fully advise them.

[10 Marks]

- (b) In certain circumstances, a partnership may be held liable to a contract with a third party because it is "*estopped from doing so*". Explain what this means.

[5 Marks]

TOTAL: 15 MARKS

QUESTION Five

- (a) Discuss the legal nature of a partnership

[7 Marks]

- (b) In terms of a partnership agreement between Grace and Audrey, Audrey is put in occupation of a farm. Audrey had to occupy and cultivate the farm for the purpose of establishing and harvesting crops. Grace provided Audrey with all the necessary implements. Grace was not responsible for any of the losses. Audrey bore all the losses and Grace was entitled to receive one half of the gross proceeds of the produce.

Consider whether a partnership has come into existence.

[8 Marks]

TOTAL: 15 MARKS

QUESTION Six

(a) In terms of Section 5 of the *Companies Act [Chapter 388]*, certain restrictions and exemptions apply in respect of the formation of partnerships. Discuss these.

[7 Marks]

(b) Josephine, Mwiya, Doreen and Barry are partners of a partnership. During the course of the partnership, the partnership accumulates a debt of K100 million that is owing to Universal Company Ltd. Explain how the partnership debt may be Settled.

[8 Marks]

TOTAL: 15 MARKS

QUESTION Seven

(a) The “*just and equitable*” ground is a ground that may justify the dissolution of a partnership under certain circumstances. Examine these.

[6 Marks]

(b) Adam, an enterprising young man is thinking of starting up a sole proprietorship and has also been invited to become a partner in a partnership. He is unsure of which option to choose. Advise him of the difference and similarities between a sole proprietorship and a partnership.

[9 Marks]

TOTAL: 15 MARKS

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
2009 ACADEMIC YEAR, 1ST SEMESTER EXAM
L431- INTERNATIONAL LAW I

TIME: 3 hrs (plus 5 minutes to read through the question paper)

**ANSWER: FOUR QUESTIONS (ANSWER A QUESTION FROM EACH
SECTION, SECTION A IS COMPULSORY).**

NO STATUTES ALLOWED

TOTAL MARKS: 60

SECTION A

- a) How has the definition of an armed attack evolved since the *Nicaragua case ICJ Reports 1986* to date and what are the requirements with regards to terrorism. [11]
- b) Can International Organizations bring claims against an unrecognized State for injuries suffered by their agents? **Explain fully.** [10]

SECTION B

2. In *Luther v Sagor [1921] 3KBD*; the English Court of Appeal established 'that recognition, once given, was retroactive in effect from the time that the recognized government established it self. It also confirmed that the British courts could not recognize or enforce the laws or other public acts of an unrecognized government.'
- Discuss [13]**

3. a) A ship flying a Congolese flag but owned by a Tanzanian national collides with a ship flying a South African flag. As a result of the collision, ten people die on the ship owned by the Tanzanian national. **Which country has jurisdiction?** [6]
- b) What is the difference between **countermeasures and acts of retorsion** under international law? [7]

SECTION C

4. According to **DJ Harris International Law p. 307** 'States enjoy immunity from judicial process only in respect of governmental activities that pertain to administration, and does not compel it in respect of other activities which are more truly commercial than administrative. **Discuss.** [13]

Az Bazhir is the former President of Gomalia. During his rule there was a lot of torture in Gomalia and a lot of people died as a result of the torture. Two months before leaving the office of Presidency, there was a blanket amnesty given to all officials who were implicated in torture. Az Bazhir goes to Scotia, a Country that has domesticated the Torture Convention for his daughter's wedding and while there he is arrested.

Can Scotia try Az Bazhir (now former President) for torture committed in Gomalia.

Give reasons [6]

Rashid who is a national of both Scotia and Gomalia wants to make claims in tort in Scotia against the government of Gomalia for personal injuries inflicted when he was tortured by Gomali's government officials. **Can he succeed? Discuss.**[7]

SECTION D

Write short notes on the following:

- a) Passive personality principle[3]
- b) Self-determination[3]
- c) Genuine link requirement [3]
- d) Dualist theory of international law [4]

According to Article 39 of the UN Charter 'the Security Council shall determine the existence of any threat to the peace, breach of security, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security. **How has the interpretation of threat to peace evolved since 1945?** [13]

END OF EXAMINATION

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a) Can Scotia try Az Bazhir (now former President) for torture committed in Gomalia.

Give reasons [6]

b) Rashid who is a national of both Scotia and Gomalia wants to make claims in tort in Scotia against the government of Gomalia for personal injuries inflicted when he was tortured by Gomali's government officials. **Can he succeed? Discuss.** [7]

SECTION D

6. Write short notes on the following:

- a) Passive personality principle [3]
- b) Self-determination [3]
- c) Genuine link requirement [3]
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7. According to Article 39 of the UN Charter 'the Security Council shall determine the existence of any threat to the peace, breach of security, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security. **How has the interpretation of threat to peace evolved since 1945?** [13]

END OF EXAMINATION