

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - 1999 FIRST SEMESTER EXAMINATIONS SCHOOL OF LAW

- 1. L 111 - Legal Process (Certificate in Law)
- 2. L 151 - Constitutional Law I
- 3. L 211 - Legal Process
- 4. L 221 - Law of Contract ✓
- 5. L 221 - Law of Contract ✓
- 6. L 231 - Law of Torts
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- 12. L 321 - Land Law ✓
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- 16. L 341 - Administrative Law ✓
- 17. L 351 - Introduction to International And Regional Human Rights Law.
- 18. L 351 - Introduction to International And Regional Human Rights Law.
- 19. L 421 - General Principles of Law of business Associations
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1999
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THE UNIVERSITY OF ZAMBIA

FIRST SEMESTER EXAMINATIONS - OCTOBER 1999

L 111 LEGAL PROCESS
(CERTIFICATE IN LAW)

TIME: THREE HOURS [PLUS TEN (10) MINUTES TO READ THE QUESTION PAPER.

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS. COPIES OF THE LOCAL COURTS ACT, SUBORDINATE COURT ACT, HIGH COURT ACT AND THE CONSTITUTION OF ZAMBIA MAY BE REFERRED TO IN THE EXAMINATION.

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1. Zambia is a dual legal system, where African Customary Law and English Law have co-existed for about a century. However, their interaction has not been conflict-free. Discuss any two of the frictions that have occurred in their interaction.
 2. In the English Language most words have more than one meaning. In order to resolve ambiguities in some statutory provisions, Judges in England formulated principles to guide themselves and the lawyers in interpreting the ambiguous provisions in the statutes. Name and explain any two of these canons of interpretation.
 3. What are the various meanings of the term 'Common Law'? Explain why and how equity came into existence. Indicate some of the effects of Equity on Common Law.

4. The Zambian Parliament has the authority to delegate some of its law-making powers to other authorities or bodies. Explain the term 'Delegated Legislation', giving the reasons why parliament delegates its legislative powers to subordinate bodies.

5. Customs are a source of Law in Zambia. But in order for a custom to be recognised and enforced by the courts, it must have some acceptable attributes. What are these attributes?

6. Write brief notes on only one of the following topics:
 - (a) The Adversary System
or
 - (b) The doctrine of Judicial Precedent.

END OF EXAMINATION

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 - (a) The Adversary System
 - or
 - (b) The doctrine of Judicial Precedent.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

**UNIVERSITY FIRST SEMESTER EXAMINATIONS - OCTOBER
1999**

L151 CONSTITUTIONAL LAW 1

INSTRUCTIONS

1. ANSWER FOUR QUESTIONS, AT LEAST ONE QUESTION FROM EACH SECTION
 2. ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM
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SECTION A

1. a. What are the three meanings of the doctrine of the Separation of Powers?
b. Discuss the *rationale* for the doctrine of Separation of Powers.
2. Every democratic state must observe the rule of law. What does the rule of law entail? Discuss fully.
3. What are the main features of the Westminster system of government? Discuss with reference to the British model.
4. The notion of democracy has become the watchword of the 1990's. Most countries in the world now claim to practise democracy. Discuss the fundamental principles of democracy, which can help us distinguish genuine democracy from false democracy.

SECTION B

- 5 (a) Why did white settlers in Northern Rhodesia want federation and why did Africans oppose it?

- (b) What mechanisms were put in place in the Federation of Rhodesia and Nyasaland Constitution to protect African interests?.
6. It has been said that the Governor in British colonies such as Northern Rhodesia was omnipotent and that there was no separation of powers. Discuss.
7. What kind of franchise was introduced under the Northern Rhodesia Constitution, 1962? What was the *rationale* behind it?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

FIRST SEMESTER EXAMINATIONS - OCTOBER 1999

L 211

LEGAL PROCESS

TIME: THREE (3) HOURS [PLUS TEN (10) MINUTES TO READ THROUGH THE QUESTION PAPER]

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY OTHER THREE (3) QUESTIONS. COPIES OF THE LOCAL COURTS, SUBORDINATE COURTS AND HIGH COURT ACTS, AS WELL AS OF THE CONSTITUTION OF THE REPUBLIC OF ZAMBIA MAY BE REFERRED TO IN THE EXAMINATION.

1. (Compulsory Question)

In Zambia, African customary law regulates the rights and liabilities of more than eighty per cent of indigenous Zambians in matters relating to marriage, divorce, inheritance and land-holding, and the courts recognise and enforce this law. However, there are statutory provisions which repress, and in some cases debar, the enforcement of certain African customary rules and practices. Citing the relevant statutory provisions, and giving at least one example, discuss the circumstances under which African Customary Law in Zambia cannot be judicially enforced..

2. In all civilized societies today, controversies are no longer settled by duel, blood-feud battles or similar archaic modes of dispute - resolution. Contradictions, conflicts and differences of any description are referred to judicial or quasi-judicial public agencies, such as the courts of law and arbitration tribunals. Indicate the role which adjudication plays in the settling of quarrels, disputes and other conflicts between opposing parties.

3. Thirty five years after attainment of independence, a substantial proportion of Zambia's statutory law today is English Law, especially in commercial matters and in dissolution of statutory marriages. The Law Association of Zambia (LAZ) will be holding a seminar in a few weeks from today and you have been invited to present a paper to the said forthcoming seminar. The title of your paper will be "The applicability of English Law in Zambia." In your paper, what would you say is the statutory basis for the extension of English Law to Zambia? Why has this extension not been done away with?

What other written provisions would you cite which authorise the Zambian courts to apply English Law procedures and practice?

4. One of the legacies of the Colonial Administration in Zambia is the English Law. And one of the doctrines of this imported law is the doctrine of judicial precedent: State what this doctrine entails, and name its merits and discuss the criticism levelled against it. In your discourse, of the doctrine explain the maxim 'Stare decisis.'
5. What is the 'Law of Equity'? Describe the circumstances in the English judicial system between the twelfth and fourteenth centuries, which gave rise to the origin of the 'Law of Equity' and explain how it impacted on the common law?
6. Write a few notes on both of the following topics:
- (a) The Adversary Judicial System
 - (b) The Golden Rule of Interpretation of Statutes

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - OCTOBER, 1999

L 221

LAW OF CONTRACT

TIME: THREE (3) HOURS

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS

1. In September, Diana, who had recently graduated from art school, borrowed K500,000 from her restaurateur cousin, Colin, in order to assist her in setting up a business as an interior designer. In return Diana agreed to repay Colin as soon as possible and to assist him redecorate the interior of one of his restaurants in time for Christmas. However, in November, Diana, who was experiencing business difficulties, explained to Colin that it was unlikely she would be able to complete the plans for his restaurant before Christmas nor repay the loan in the foreseeable future. Colin was furious because he had widely publicised the re-launch of his restaurant. Therefore, he said that as long as the redecoration was finished by December, Diana need only repay half of the loan. By early December the renovation was complete. The redecoration attracted wide praise and by January Diana's business was booming. Colin is now demanding that Diana repay the remaining K250,000.

Advise Diana and Colin.

2. "Faced with this abuse of power - by the strong against the weak - by the use of small print conditions - the judges did what they could to put a curb upon it. They still had before them the idol, 'freedom of contract'. They still knelt down and worshipped it, but they concealed under their cloaks a secret weapon. They used it to stab the idol in the back. This weapon was called 'the construction of the contract'. They used it with great skill and ingenuity. They used it so as to depart from the natural meaning of the words of the exemption clause and to put upon them a strained and unnatural construction."

(Lord Denning MR in Mitchell v Finney Lock Seeds [1983] 1 QB 284 at p 297)

Discuss.

3. Chilufya owned a sailboat which was beached on a remote shore of Chilubi Island. On February 16 David called Chilufya about buying the sailboat. Chilufya said: "I will sell the sailboat to you, or to anybody else for that matter, for K300,000. Upon an agreement you may take possession of the sailboat." On March 1st David picked up the sailboat, towed it back to his slip in the harbor on the mainland and accordingly informed Chilufya on March 15. On March 1st Nelson, who had learned of the offer from David sent in a notice of acceptance.

(i). Discuss the rights of the parties.

(ii). Would the result be different if Chilufya had not said "Upon an agreement you may take possession of the Sailboat?"

(iii). What would be the result if instead of picking up the sailboat on March 1, David had sent a letter stating: "This letter is sent to confirm that I am purchasing the sailboat of which we spoke on the terms indicated. Naturally I expect that an arbitration clause is part of our deal."

4. Barbara and Jeff Mills lived in Harare. They were reasonably well off with a good pension and had no children. When they reached retirement age in 1995, they moved to Kariba where housing was cheaper. They bought a house and settled in happily. Jeff was quite frail and his wife spent much of her time looking after him. Barbara died suddenly of a heart attack in May 1997.

Jeff's divorced younger sister, Janet, lived alone in Lusaka. Janet had children, but they were adults. After Barbara's funeral, Janet and Jeff had a long talk about the future, but reached no conclusion. Jeff was worried about being on his own, and thought he might have to go a nursing home. A few days after the funeral, Jeff wrote to Janet:

Thank you for spending so much time talking with me about the next few years. I think I now know how you must feel living alone. But it's harder for me at my age and in my health. Will you come and live with me, and help look after this house and me? It would be so good to share everything. I realize we haven't been that close since we were teenagers, but I'm sure we can make up for lost time. I am in poor health and I am sure that I will die before you. With Barbara gone, I would like to leave the house to you in my will if you come to live with me.

As soon as Janet read the letter she telephoned Jeff, and said she would like to come to live with him. Since Jeff's house in Kariba was fully furnished, Janet had to sell or give away virtually all of her furniture. Janet had been working part-time as an secretary and notified her employer that she would be quitting. Her remaining source of income was a rather small monthly sum of alimony from her former husband. A month later Janet said her good-byes to friends and her two grown children who lived in Kitwe, and moved to Kariba.

For the first year, things went well. Jeff and Janet spent almost all their time together. Jeff insisted on paying for the groceries, as well as paying for the household expenses. Janet did the shopping and household tasks, including preparing meals. Janet often took Jeff for drives in the country, and to see films and plays. One evening in September 1998, they had a long discussion about relations with their Mother, who died five years earlier. Janet was very critical of their Mother who, she said, had almost ruined her life. Jeff defended Mother, and the discussion deteriorated into an angry exchange. Janet left the house and slammed the door. On her return, they didn't speak to each other for several days.

Then Janet apologized and asked Jeff to forget about their argument. Jeff agreed, but relations became very cool between them. Although Janet went about her household chores, she spent most of her time with friends. Every once in a while the siblings would have a subdued argument and relations seemed uncomfortable.

Ten days ago, Janet came home to find Jeff waiting for her at the door. Jeff said, "I don't think I can take this anymore. You're making my life miserable; I'd rather be alone. I want you to move out in the morning."

Janet said, "You can't be serious! I've given up everything to come live with you. I have nowhere to go."

Jeff replied, "You came here because it was better for you. Well, it isn't any longer. Go to your children. They'll take care of you. I don't have anyone."

Janet replied, "No, I won't go. You can't put me out," and went up to her bedroom.

The next morning Janet went to get advice from her Church minister, but when she came home her suitcases and all her belongings were on the veranda, with a note from Jeff saying:

"I've changed all the locks. You're not welcome here. Just go!"

Janet took her suitcases and went to stay with a friend. A few days later she received a note from Jeff saying:

"I don't want you to bear a grudge now that we're apart. So here's a cheque for \$ 10,000 and you can forget our arrangements and move back to Lusaka."

Janet comes to see you for legal advice. She believes that Jeff has been very unfair and that she has suffered a significant loss, but she needs the money and is considering cashing the cheque.

Please advise Janet.

5. In January 1994, Derek advertised for sale his 1992 Porsche 911 in the local newspaper and in response to this Patricia called to see him and inspect the car. Patricia immediately fell in love with the car, though was unsure whether she could afford the asking price of K40 million given the existing state of professorial salaries. She asked Derek for some time to think about the matter, whereupon he responded that he was anxious to sell the car as soon as possible. Finally Derek agreed to give Patricia more time, and he typed out the following, which both he and Patricia signed

' 18 January 1994

I, Derek Soko, hereby offer to sell my 1992 Porsche 911 Carrera motorcar, registration number NIC 513, to Patricia Mumba for the sum of K40 million. This offer may be accepted by letter sent to my office in Woodlands and if so accepted shall be deemed to have been effected at the time when such a letter would usually be delivered. I also undertake not to sell the car to anyone else before Wednesday 29 January 1994.'

After a few days deliberation Patricia decided to buy the car and wrote a letter to Derek accepting his offer. This letter, addressed to Derek's Woodlands office, was dated 22 January 1994 and was posted on the following day, Thursday 23, in Chelston. Letters posted in Chelston are normally delivered to woodlands addresses the following day (excluding Saturday, Sunday and Public Holidays), and Patricia's letter should therefore have been delivered to Derek on Friday 24 January. However, due to a power failure, mail was delayed and the letter was not delivered until Monday 27 January.

In the meantime, a friend of Derek's, in urgent need of a car, offered him K35 million for the Porsche, and on Sunday 26 January he decided to sell it to him as he had heard nothing from Patricia. However, he phoned Patricia that day and told her that he would no longer sell the car to her. Patricia replied that she had already accepted the offer by posting the letter on 23 January and demanded the car in return for the price of K40 million. Derek could not comply as his friend had already taken the car and had smashed it up on its 'maiden voyage'.

Patricia was unable to buy a similar vehicle for the same price and therefore instituted proceedings against Derek claiming damages for breach of contract. Assume you are acting for Derek. Advise him fully as to whether he is liable to pay damages to Patricia.

6. (i) Farmer Bob goes to the market to auction his calf. On the morning of the sale, before the commencement of the proceedings, Farmer Joe is examining the calf when Farmer Bob comes up to him and says "I had her examined by the vet last week, and he says there's nothing wrong with her. She's as sound as a bell". Farmer Joe stops his examination, and in due course purchases the calf at the auction. A term in the auction conditions of sale reads

"no warranty is given as to the quality of any animal".

It is true that a vet last week pronounced the calf in good health. Unfortunately the vet was wrong; the calf has tuberculosis and dies a few weeks after the sale. Does Farmer Joe have a remedy?

(ii) Henry, in the course of negotiations in January for the sale of his embalming business, Embalming Industries Ltd, to Benny, stated that the business was earning a net profit of about K120 million per annum. He produced his accounts, which made it clear that the profit had never in fact been more than K60 million. Benny did not read the accounts.

In May Benny entered into a written contract to buy the business for K300 million. In the meantime, business had taken a turn for the better and Embalming Industries Ltd was making profits which would exceed K120 million in a full year. The contract contained a clause which provided:

'The purchaser agrees that he places no reliance upon any representation concerning the business except such as are contained herein.'

The business was transferred to Benny and the price paid. Benny has now heard that the business premises are likely to be compulsorily acquired to make way for a new road, a fact that Henry knew all along. Benny seeks your advice

7. (i) On 15 September Jack agreed to buy from Arnie a cargo of dung-beetles which had been shipped aboard Arnie's ship the 'Bucket o' Rust', expected at Durban on 24 September. Unknown to both parties, the dung-beetles had already been sold by the captain of the 'Bucket o' Rust' as they were about to die from heat exhaustion. Owing to a scarcity of dung-beetles, the market price had risen steeply by 24 September and Jack brings an action against Arnie for damages. What are his chances of success?

(ii) Both Mickey and Donald think that Donald's chair is of the period of George II and worth about \$10,000. Acting under this impression Mickey agrees to buy it from Donald for \$10,000. In fact the chair is a late Victorian imitation worth only \$500. Advise Mickey.

Would your answer be any different if Mickey alone thinks that the chair is a George II chair, and Donald realises that Mickey is buying under this impression?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER SUPPLEMENTARY EXAMINATIONS - DECEMBER,
1999

L 221

LAW OF CONTRACT

TIME: THREE (3) HOURS

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS

1. (i) On June 1st Chanda posted a letter to Paul offering to sell him his horse Cicero for K5 million and promising to hold the offer open until June 11th. On June 5th Chanda sent a letter by hand to Paul's office withdrawing his offer. The letter was placed on Paul's desk but Paul did not come to the office that day. On the same day Chanda also telephoned to Paul's house and left a message with Paul's wife that the offer was withdrawn, but Paul's wife forgot to pass the message on to Paul. That evening Paul posted a letter of acceptance to Chanda. Is there a contract? Give reasons for your answer.

(ii) Would your answer be any different under the following circumstances? Chanda had not attempted to withdraw the offer, as stated above, but had sold the horse to David on June 9th, without informing Paul. On June 10th Paul caught a bus to Chanda's office and overheard one stranger on the bus telling another: "I hear Chanda sold his horse Cicero to David". Paul nevertheless proceeds to Chanda's office and tells Chanda that he accepts his offer of June 1st.

2. Mike in Pretoria sends an offer by letter to Peter in Ndola. Peter posts a letter in Ndola accepting the offer. The letter is returned to Peter by postal authorities because it is inadequately stamped. Peter then telephones his acceptance to Mike, but the line is bad and Mike does not understand what Peter is saying. The next day Mike sends a fax to Peter withdrawing his offer. The fax reaches Peter after he has written a letter reiterating his acceptance of Mike's offer and five minutes after he has given this letter to a messenger to post but five minutes before the messenger in fact posts it.

Is there a contract? Give reasons for your answer.

3. The trustees of a hospital sent circulars to prominent business persons in the community explaining that they wished to build and equip a new operating theatre and were inviting subscriptions. Mumba posted a letter promising K10 million to be used for the purchase of an operating table; Lombe posted a letter promising K10 million if the trustees inscribed his name on their list of benefactors; Tembo posted a letter promising K10 million if at least two other business persons promised the same. On receipt of these and other promises the trustees signed contracts for the building and equipment of a new operating theatre. Mumba, Lombe, and Tembo have now all refused to pay them any money. Advise the trustees.

4. Evan sells Pat his catering business. In exchange for the business Pat agrees to pay Evan's aged mother Martha K50,000.00 a week for her life. After paying this sum every week for a year, Pat, who has been finding catering tough going, asks Martha if she would be willing to accept K30,000.00 per week from now on. Martha agrees, and Pat, who was thinking of abandoning catering as a career, now decides to persevere in his business. Martha, however, has acquired expensive tastes, and finds K30,000.00 a week not sufficient to maintain her habits. She asks Evan to ask Pat to resume paying the full K50,000.00 a week. Evan asks Pat to do so, but Pat refuses; Evan, who has had a falling out with his mother, does not want to pursue the matter any further. Advise Martha.

5. In 1992 Jackson decided to hire a bulldozer from a local hiring service, Plant Hire Co., in order to clear a block of land. Consequently, Jackson spoke to the manager of Plant Hire Co about hiring a suitable machine. During their discussions, Jackson made it clear that the bulldozer he hired must have a capacity to move 100 tonnes of earth an hour and the manager of Plant Hire Co replied that he guaranteed that it would be able to do this. In addition, Jackson pointed out that because of the small profit margin allowed in his contract to clear the block of land, the fuel economy of the bulldozer was also important. The manager of Plant hire Co said that his bulldozer used no more than 10 litres of diesel fuel per hour; satisfied Jackson, who replied that on this he would hire a

bulldozer for four weeks. The manager then handed him his standard hiring contract form which Jackson read through and signed.

This contract form, however, made no mention of the fuel consumption of the bulldozer and the final clause stated that no undertaking was given that its earth moving capacity exceeded 50 tonnes per hour.

When Jackson used the bulldozer he found that it could move only 80 tonnes of earth per hour and used 15 litres of fuel per hour.

Advise Jackson as to whether Plant Hire Co is in breach of contract.

6. Helen had lived with her parents in Lusaka until they were both killed in a car accident in 1995. Helen was then 22, and in order to sustain herself, she took a job as a hostess in a lodge in Livingstone. Helen's only remaining relative was her aunt, Irene, who greatly disapproved of Helen's job. After Helen moved to Livingstone Irene wrote to her on a number of occasions, suggesting she come back to Lusaka, but each time Helen's reply was that she was earning more money than she could ever earn in Lusaka, that she had a pleasant flat and that she enjoyed living by herself.

In January this year Irene wrote again to Helen, this time saying that if Helen came back and lived with her in Lusaka she would give Helen half a share in her house. As the house is worth K100 million Helen agreed to come back; she gave up her flat, resigned her job and returned in February, and has been living with her aunt since. Irene has still not had the necessary documents prepared for giving Helen the half share in the house, and Helen wishes to enforce her aunt's promise. Can she do so? Give reasons for your answer.

7.(a) As clearly as possible, and with the aid of case law outline the tests applied by the courts to determine whether or not a statement is a term of the contract.

(b) What is the rule in Pinnel's case?

THE UNIVERSITY OF ZAMBIA

FIRST SEMESTER EXAMINATION - OCTOBER 1999

L 231 LAW OF TORTS

TIME: THREE HOURS [PLUS 10 MINUTES TO READ THE QUESTION PAPER]

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.

QUESTION ONE: (This is a Compulsory Question).

Mrs Bwalya and Mrs Zulu are workmates in the open banking hall of the Indo-Zambia Bank, Kabwe Branch. According to Zambian cultural arrangement, the two women are known as 'tribal cousins' and acting in that capacity they have the right to poke fun and to make verbal and practical jokes at each other.

One rainy Monday morning Mrs Zulu drove her four-year old daughter to Second Millenium Nursery School in the town centre. When she reached her place of work at Indo-Zambia Bank, her 'tribal-cousin' Mrs Bwalya, informed her that she (Mrs Bwalya) had just received a telephone message from a friend who works close to Second Millenium Nursery School, that a few minutes before the heavy rain storm had caused the roof of the second Millenium Nursery School to collapse, killing all the twenty-two children in the nursery school together with their two teachers.

On hearing this sad message, Mrs Zulu concluded that her daughter had died in the storm and fainted with shock and was seriously ill for seven months. One result of her illness was amnesia (memory loss). Soon after Mrs Zulu fainted, Mrs Bwalya confessed to Mr Jimmy Zulu, Mrs Zulu's husband and later on to Mrs Zulu herself that the message about the accident was just a practical joke and was therefore false.

Mrs Zulu has approached you and would like to know if she could recover any damages from Mrs. Bwalya in respect of the injuries resulting from the shock she suffered. In your answer, briefly describe the tort, if any, upon which Mrs Zulu could base her action. You may cite any relevant authorities in support of your answer. You may also state whether the 'tribal cousinship' would be a valid defence for Mrs Bwalya.

QUESTION TWO:

- (a) Joseph Chibomba-Milimo is an overworked accounts clerk at the Ministry of Finance Headquarters, Lusaka. One Wednesday afternoon at 16.30 hrs., he fell asleep in his office due to exhaustion.

At the time of locking the offices at 17.00 hrs, Saganiza Banda, the offices caretaker, failed to check the offices that day to ensure that everyone had left. He unknowingly locked Joseph Chibomba-Milimo in for seven hours until midnight (24.00hrs), when watchmen guarding adjacent buildings telephoned Saganiza Banda, who came to the offices to unlock Joseph's office and release him. Joseph Chibomba-Milimo is upset about this incident and would like to sue Saganiza Banda. For what tort can he sue? Can he succeed? Give the requirements of the tort. Has Banda got any defence available to him? Would it make any difference if Joseph Chibomba- Milimo had slept in his office all night long until 0800hrs

Thursday morning when he was legally required to be in his office and without knowing that he had been locked in?

- (b) Distinguish between assault and battery. Give examples of each tort.

QUESTION THREE

'A defendant can only be liable for damage which a reasonable man would foresee might follow from the negligent act.'

Examine this statement and say how it is related to the decisions in the cases of *Re polemis* (1921) 3 K.B. 560, *Donoghue v Stevenson*, (1932) A.C. 562, 580, and the two wagon mound cases. (1961) and (1967).

QUESTION FOUR

Discuss two of the following:

- (a) *Res Ipsa Loquitur* (Cite one or more authorities)
- (b) *Volenti non-fit injuria*. (Give examples).
- (c) Place of Motive in the Law of Torts

QUESTION FIVE

All false statements to a man's discredit are defamatory," per Cave J in *Scott v Sampson* (1882) 8 Q.B.D (491).

- (a) Name and explain the three essentials of the tort of Defamation?
- (b) Mention all the differences between slander and libel stating which one is actionable per se.
- (c) Discuss any two defences to defamation.

QUESTION SIX

The basis of the Law of Nuisance is the Latin maxim:

sic utere tuo ut alienum non laedas (Literally meaning, 'Live and let live')

And to lessen, frivolous, trifling and vexatious litigation the law of nuisance has designed another maxim:

De minimis non curat lex

- (a) What do these maxims mean?
- (b) Bearing in mind both these maxims, discuss the various factors that are taken into account in determining whether or not a nuisance has been committed. Explain how the case of *St. Helen's Smelting Co. v Tipping* (1865) 11. H.L.C. 642 is relevant to your discussion.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER DEFERRED/SUPPLEMENTARY EXAMINATION

L241 - CRIMINAL LAW I

DECEMBER 1999

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

INSTRUCTIONS: ANSWER ANY FOUR QUESTIONS. COPIES OF THE PENAL CODE AND THE CRIMINAL PROCEDURE CODE MAY BE BROUGHT INTO THE EXAMINATION ROOM.

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1. One Saturday morning Peter Chilwani left his village for the next village to visit his elder sister, using a lonely footpath, and carrying an axe on his shoulder. He suddenly bumped into his old foe, with whom he had quarrelled and physically fought four times in the past over several issues.

As the two men passed by each other Chilwani struck his enemy with the axe in the head, causing him to fall to the ground. He inflicted two more wounds on his victims on the left thigh and on the right arm. Leaving him for dead, Peter Chilwani ran into the bush where he hid for three weeks feeding on fruits, roots and rodents.

After twenty-one days, a police search for Chilwani was mounted, and within a day the long arm of the law caught up with him. His victim did not die but is still nursing the two deep wounds on the arm and thigh. What offence or offences can the police charge Chilwani with? At the trial he intends to put up the defence of provocation, in that the sight of his enemy provoked him to act as he did. Discuss whether that defence is appropriate for the offence or offences you have mentioned.

2. Zambia is currently experiencing high level of unemployment, less health care services, less educational facilities and less capital projects. As a consequence crime rate has swung up.

There are several theories of punishment and principles of sentencing. what principles of sentencing do you think the Zambian Courts should be applying in sentencing convicts that commit crimes due to hunger, lack of medicine, lack of clothes and lack of other social amenities? Briefly discuss two other principles of sentencing.

3. Self-defence and the defence of certain 'loved ones' is recognised by criminal law. Where it is not used excessively the accused is deemed to be not criminally responsible.

Jones Moyo left Chilanga suburbs and went out to Chelston Township to visit his two-week old lover, Monica Chibutamenso. At her apartment he found her crying and she explained to him that her former boyfriend, Kabobola Mudenda, had slapped her four times in the face for walking on him a month earlier. She and Moyo came out of the building and Chibutamenso pointed at Mudenda who was fifty-metres away walking back to his home within Chelston Township.

Moyo followed Mudenda, and without exchanging any words with him stabbed him in the abdomen several times. He died from severe bleeding. Moyo has been charged with the murder of Mudenda, and he has put up a defence of defending his loved one, Monica Chibutamenso.

Discuss whether or not that defence would stand at the trial. In your discussion state also in what situations the defence is most appropriate. You may cite decided cases, if any, or statutory provisions in support of your answer.

- 4(a) Dickson Tando, aged 21 years, had carnal knowledge of a fourteen year old girl who freely and willingly consented to the act, after Tando gave her a packet of cookies. The two were compromising with each other in the Kitchen of the girl's parents.

While they were still in the illicit act, the girl's mother found them and called for assistance. The woman's neighbours apprehended Tando and took him to the police station, where he was charged with the offence of defilement of a girl under the age of 16 years.

At his trial Tando intends to put up two defences:

- (i) That the girl was his long-time girl friend.
- (ii) That she consented to the act.

Can any or both of these defences succeed? Discuss.

(b) what are the elements of the offence of rape? what is its maximum penalty under the Zambian Penal Code?.

5. Write brief notes on any **Two** of the following:

(a) The negation of mens rea by accident, ignorance and mistake of fact.

(b) Intoxication as a defence in Criminal Cases.

(c) Elements of the Crime of Murder.

6. Before an accused person can be convicted of the offence of theft, the prosecution must prove a number of ingredients against him beyond all reasonable doubt. state all the elements of this offence. What is meant by the words **'beyond all reasonable doubts'**?

THE UNIVERSITY OF ZAMBIA

UNIVERSITY FIRST SEMESTER EXAMINATIONS - OCTOBER 1999

L251 CONSTITUTIONAL LAW 1

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

INSTRUCTIONS

- 1. ANSWER FOUR QUESTIONS, AT LEAST ONE QUESTION FROM EACH SECTION**
 - 2. ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM**
-

SECTION A

1. Critics have said that most African countries have had constitutions but have not had constitutionalism. Discuss critically
2. Zambezia, a British colony for 90 years, is about to achieve its independence. Negotiations over a new constitution for the independent state have been scheduled for Lancaster House in London. The British government has invited political parties and chiefs in Zambezia to participate in the constitutional talks. You have been hired by one of the political parties, ANIP, to be its legal advisor. One of the items to be discussed is the system of government to be adopted. ANIP asks you for advice on which system of government it should advocate. Write a memo or brief discussing the merits and demerits of the Presidential and Westminster systems of government. Your memo should clearly indicate your preference.
3. Mambazo runs a newspaper called **The Vanguard**. It is very critical of government, and particularly of the President, Hefty Jay. **The Vanguard** publishes a story linking several government leaders to drug trafficking and corruption. A member of the National Assembly, Chibundi, raises a point of order in the Assembly over the said story. He alleges that the story is inimical to the security of the state as donors and investors will lose confidence in the

leadership. He says the country's international reputation has been ruined. The Speaker agrees and orders the police to arrest the reporters and shut down The Vanguard. Around mid-night of the same day heavily armed para-military police swing into action. They take Mambazo and his reporters into custody. The detainees are held *incommunicado* and are denied access to lawyers. Furthermore, the police surround **The Vanguard's** offices, cut off power and water to the premises and prevent anyone from leaving the building or delivering food to those inside the building. Lawyers apply for *writs of habeas corpus* but on the day set for the hearing the police fail to produce the detainees in court. The Inspector General of Police and the Minister of Home Affairs accuse the judiciary of "interfering in matters of national security" and vow to ignore the courts. Within days, Parliament passes the *Mass Media Act*, which outlaws publication of stories which have the tendency of casting aspersions on leaders or bringing the leaders into public ridicule or contempt. The *Act* makes it clear that truth is not a defence to those arrested for infringing the provisions of the *Act*.

Hefty Jay's son, Mao, runs amok during one of his drinking sessions. He picks up a bottle of Mosi and crashes it on the head of Mwape, severely injuring him. This matter is reported to the police but they refuse to arrest Mao.

What constitutional rules and principles are involved in this situation?
Discuss critically.

4. What is judicial review and what is its primary implication? In what situations will it apply? Does the fact that a country has a written constitution or an unwritten constitution have implications for judicial review?

SECTION B

5. To what extent were the rights of Africans in Northern Rhodesia protected during colonial rule? Discuss with the aid of authorities.
6.
 - (a) What was the main objective of the British government in devising the *1962 Constitution* in Northern Rhodesia?
 - (b) Briefly outline the franchise introduced under the Northern Rhodesia Constitution, 1962. Did it achieve its intended purpose/s?
7. To what extent was the doctrine of the separation of powers applied under the *Northern Rhodesia Order in Council, 1911*?

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

FIRST SEMESTER DEFERRED/SUPPLEMENTARY EXAMINATIONS DECEMBER 1999

L251

CONSTITUTIONAL LAW

- TIME** : THREE HOURS (Plus 5 minutes to read the paper)
- ANSWER** : Four (4) Questions, AT LEAST ONE QUESTION FROM EACH SECTION
- NOTE** : ONLY UNMARKED STATUTES MAY BE BROUGHT INTO THE EXAMINATION ROOM
-

SECTION A

- Q1. Discuss at least five ways in which constitutions are classified.
- Q2. (a) What are conventions and why are they observed?
- (b) Give examples of three conventions observed under the Westminster system of government.
- Q3. What do you understand by the doctrine of collective responsibility? How does the doctrine of collective responsibility operate in the Westminster system of government?
- Q4. How can the notion of executive independence be reconciled with the system of checks and balances under the American Presidential system of government?

SECTION B

- Q5. Discuss the Constitutional arrangements put in place in Northern Rhodesia in 1924 in light of the theory of the Separation of Powers.
- Q6. (a) Why were the Africans in Northern Rhodesia and Nyasaland opposed to the creation of the Federation of Rhodesia and Nyasaland?

- (b) What institutional and legal mechanisms were devised to protect African interests under the Federal Constitution?
- (c) Were the mechanisms in (b) effective in protecting African interests?

END OF EXAMINATION!

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER SUPPLEMENTARY/DEFERRED EXAMINATIONS DECEMBER 1999

LAW OF EVIDENCE - L311

TIME : THREE HOURS (Plus 5 minutes to read the paper)
INSTRUCTIONS : ANSWER QUESTION ONE AND THREE OTHERS

Q1. Chanda a business tycoon in Lusaka and two of his employees Juma and Patrick have been charged with peddling in emeralds and attempting to corrupt a police officer by offering him a bribe so he could turn a blind eye to the crime. At the time of the arrest the emeralds were in the bookcase of Juma's son aged seven. Immediately after the incident the police officer Mwanza wrote a comprehensive report in his note book and arrested the three. Mr. Chanda told his wife what had happened and his story amounted to a confession. This conversation was overheard by John who unknown to the couple was in the room next to their bedroom. Soon after the arrest of Chanda, Mrs. Chanda who had for sometime been complaining about her husband's cruelty to her, petitioned for divorce and was in the meantime granted judicial separation. The trial of Chanda began a week ago and Mr. Chanda has engaged the services of Shapir, S.C. During the trial before he could give evidence the police officer who arrested them died. The prosecutor is confronted with the following problems. He wishes to tender the evidence of the dead police officer. He wishes to call Juma's son as a witness. He wishes to call Mrs. Chanda as a witness and also wishes to call John to testify on what he heard Mr. Chanda say to his wife. The defence has objected to this arguing that John and Mrs. Chanda can neither be called to give evidence for the prosecution nor is their evidence admissible. The prosecutor requested for an adjournment in order to come and consult you a state Advocate for advice.

In addition to these problems the prosecutor has also learnt that Mrs. Chanda and John apparently out of dislike for the prosecutor have vowed not to give evidence for the prosecution.

Advise the prosecutor.

Q2. "... It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment for the purpose of leading to a conclusion that

the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried”.

Per Lord Herschell in *Mykint v AG for New South Wales* 1894 A.C. 57 at page 65.

Discuss

Q3. Discuss the following situations

- (a) In an action on a bill of exchange Jane one of the plaintiff's witnesses was asked whether she was his mistress and she denied it. The defendant gives evidence to contradict her.
- (b) Banda accused of forgery was asked whether he was convicted for forgery twenty years back. Banda denied it. The prosecution gave evidence to contradict him.
- (c) On a charge of rape, David in furtherance of the defence of consent, in his evidence in chief suggested that the prosecutrix performed acts of gross indecency upon him. Thereupon, the prosecution cross-examines him on his record.

Q4. Write short notes on the following:

- (a) Distinguish between “Competency” and “compellability” of witnesses
- (b) Comment on the Phrase “Res gestae”
- (c) Distinction between consistency and corroboration
- (d) The rule against hearsay and the exceptions provide thereunder.

Q5. John and Mary lived together as man and wife for twenty years Mary cooked, cleaned the house, and entertained visitors in the house. They often attended parties as Mr. and Mrs. John Mwale.

A search at the Lusaka registry revealed that the marriage was not registered. John disappeared from Lusaka in 1981 and has not been heard of since. Mary assuming him dead went through a marriage ceremony with one Simon and a normal child called Mike was born seven months after John's disappearance. Simon accepted the child as his and spent a lot of money on his upbringing. The child resembled a longtime boyfriend of Mary called Peter who she admitted to have been meeting from time to time for many years. In fact, Mary had in private conversation told Joan, her best friend that the child belonged to Peter. Mary recently died. John's nephew Masauso has applied to the court for a declaration that John is dead and that Masauso should inherit John's huge house on the grounds that he is the only relative of John. This is contested by Mike.

Discuss the various evidential issues that have arisen.

- Q6. Discuss the Law relating to legal professional privilege and explain the objectives it seeks to achieve.

END OF EXAM!

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

OCTOBER, 1999 EXAMINATIONS

L311 - LAW OF EVIDENCE

TIME: THREE HOURS PLUS 5 MINUTES FOR READING THE QUESTION PAPER

ANSWER: FOUR QUESTIONS ONLY

1. (a) How is evidence of Public documents admitted in court proceedings?
(b) Under what conditions secondary evidence of other documents is admitted in court.

2. John Chambo had a happy life together with his wife, Joy. During the 1998 he involved himself in criminal activities at his working place. He had disclosed such information to his wife and at times gave her forged cheques to keep. On 30th January, 1999 a dispute occurred between them and his wife shouted saying "You thief, I shall tell the police all your criminal activities". This annoyed John who severely beat Joy and fractured her arm. The incident was witnessed by their son, Philip, aged 10 years. Joy reported the matter to the police who later arrested John and charged him with:
 - (i) Theft by servant, for the monies he stole from his employers amounting to K30,000,000.00.
 - (ii) Grievous bodily harm, for the injuries Joy sustained.

At the trial Joy gave evidence in respect of both charges, and Philip was also allowed to give evidence. Based on the evidence of these two witnesses and that of the arresting officer, John was convicted of both counts and sentenced to 3 years on each count to run concurrently. You are a junior counsel in the Law firm representing him on appeal, and you are requested to give a legal opinion to your senior counsel. What would be your discussion, with authorities?

3. Mr James Bwalya a civic activist was called to give a lecture on human rights and on the presumption of innocence, and the theme was that an accused person in criminal

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

OCTOBER, 1999 EXAMINATIONS

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3. Mr James Bwalya a civic activist was called to give a lecture on human rights and on the presumption of innocence, and the theme was that an accused person in criminal

proceedings **never** bears the burden of proof. Is this a proper proposition of the law and can you discuss with authorities.

4. Joice on the 7th May, 1999 was walking along the road around Bauleni Compound, on her way home from a neighbouring farm at 16.00 hours, met Philip Jamba from the opposite direction. Jamba proposed love to Joice, who declined the proposal. Thereafter Jamba got hold of Joice and pushed her in the bush. He then had forced sex with her. She was crying for help throughout. Jamba left her and ran into the bush. There came Mweemba who showed some surprise on seeing the distressed condition of Joice, whose skirt was torn. Joice immediately narrated what had happened to her.

Three days later Jamba was arrested by the police after being identified by Joice. He was charged with rape. At the trial, Banda, the Public Prosecutor called Mweemba to testify on behalf of the prosecution as to the state and condition Joice was found on the day in question and, also as to the statement made to him by Joice of the forced sex by Jamba. Thereafter Banda urged the court to convict Jamba on the ground that Mweemba's evidence corroborates that of Joice and that her statement made to Mweemba and repeated by him in court was evidence of truth as contained therein.

The trial court upheld the submission of Banda and held that:

- (i) Evidence of Mweemba was corroborative of the prosecutrix as to distress condition, being **extraneous** evidence of Joice which needed corroboration; and
- (ii) Statement made to Mweemba was admissible of being the truth of its contents.

You are a defence counsel intending to appeal against the admissibility of these items of evidence. What would be your argument?

5. The character evidence is the same as similar fact evidence in criminal matters. Discuss, with authorities.

6. Peter Jere, a student at UNZA was being accused of stealing books from UNZA library the allegation he had denied. On the 15th April, 1999, he was picked by UNZA security officers who interrogated him for three hours and he was severely tortured by them. He maintained his denial and was put in custody. After eight hours the police officers had their turn of interrogating him. But on commencing the interviews the leader of the team said "we heard of what had happened with UNZA Security officers and we hope you will not opt for that process to continue here". Jere on hearing that he immediately stated that he admitted the allegation and offered to lead the Police to where the books were hidden. He thereafter led the police to his parents' home in Kafue where in his bed-room various books on different titles were found, and all had UNZA stamp. They were all collected and kept as exhibits. Jere was later charged with theft. The police were now very friendly and administered a warn and caution, and in reply Jere admitted the charge. At the trial you are asked to

represent him, what would be your concerns regarding some aspects of evidence in this case?

7. Write short notes on two of the following:

- (a) Judicial notice
- (b) Presumption of death
- (c) Opinion evidence

END OF EXAM

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER SUPPLEMENTARY/DEFERRED EXAMINATIONS DECEMBER 1999

LAND LAW -L 321

INSTRUCTIONS

- ANSWER** : QUESTION ONE AND ANY THREE
- TIME** : THREE HOURS (Plus 5 minutes to read the paper)
- TOOLS** : STUDENTS ARE ALLOWED TO USE ANY RELEVANT STATUTE
-

- Q1. Trace the origin and evolution of the current land tenure system in Zambia? (60 points)
- Q2. Mr and Mrs John Jaulani jointly own plot 505, a beautiful house in Lusaka's Kabulonga residential area and where they live with their three children. Mr. and Mrs. Jaulani have been married for the past fifteen (15) years, however, in the past three months, they have been on separation. Mrs. Jaulani has been living with her sister, Janet Banda, in Lusaka's Mtendere compound. During the rain season, Mrs. Jaulani contracted the cholera disease from which she died of. Mrs. Jaulani left a will in which she expressed her desire that her share of the house on plot 505 should devolve on her elder sister, Janet Banda, and her three children. Mr. Jaulani is worried about the contents of the will and he has approached you for legal advice.
- Advise Mr. Jaulani
- Q3. Mrs. Andreas Tembo owns farm 506 in Chisamba, Lusaka and has been the sole owner for the past thirty-five (35) years. During this period, Mr. Dominic Chungu has been visiting the farm to cut down trees for his charcoal business. Mrs. Tembo has tried on numerous occasions to stop Mr. Chungu from entering her farm to cut down trees but all her efforts have been in vain. Mr. Chungu has always insisted that he owns both an easement and a license over the farm that allows him to cut down trees for his charcoal business. Mrs. tembo has approached your law firm for legal

advice and she has informed you that Mr. Chungu does not own any land at all that is appurtenant or adjoining her farm.

Advise Mrs. Tembo.

- Q4. How can a mortgagor protect his/her interest against the mortgagee? And how can a mortgagee enforce his security against the mortgagor?
- Q5. Discuss the maxim "Nulle terre sans seigneur?"
- Q6. Compare and contrast a lease from a license? What is the effect of the Land and Deeds Registry Act, the Statute of Frauds Act 1667, and the Real Property Act 1845 on the lease for three years?
- Q7. Discuss the Bonafide Purchaser Rule in the context of the development of trusts?
What is the rationale underlying the rule?

END OF EXAM

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

UNIVERSITY EXAMINATIONS - OCTOBER, 1999

LAND LAW (L321)

INSTRUCTIONS: ANSWER QUESTION ONE AND ANY ~~TWO~~ *Three*

TIME: THREE (3) HOURS

TOOLS: STUDENTS ARE ALLOWED TO USE ANY RELEVANT
STATUTE

1. (a) What is an easement and profit a prendre? Briefly discuss the essential elements of an easement?
 - (b) Critically analyze and discuss the nature of the rights of parties in the following maxim:

"Quic quid Plantantor Solo Solo Cedit" in particular as regards the vendor and the purchaser, the lessor and the lessee?
 - (c) How can a mortgagee enforce his security against a mortgagor? How is the equitable right of redemption terminated?
 - (d) Discuss the composition and functions of the Lands Tribunal?
2. Briefly discuss the maxim "nulle terre sans seigneur"? How does the doctrine of tenure differ from the doctrine of estate?
3. What is a joint tenancy and what are its principal features that distinguish it from other forms of co-ownership?
4. What are the incidences of ownership? Can one rally own land? Discuss.
5. Compare and contrast a lease from a license. What is the significance, if any, of the Statute of Frauds 1667, the Real Property Act 1845 and the Lands and Deed Registry Act on a lease for three years?
6. In an English land transaction, in which you have been retained to act as an advocate, Kajoba, the fee simple owner of plot No. 505, Lusaka, granted his land to Francis to hold for life with remainder to Nkandu to hold in fee tail with remainder to Kaluba to hold in fee simple.
- Kajoba has died two months after Nkandu and one year after Kaluba. Kaluba died without living issue or any blood but Nkandu's daughter survived the mother as did Francis's nephew.

- (a) Assess the rights of Francis and Nkandu's estates in the fee simple.
- (b) Distinguish a reversionary interest from a reversion.

7. Discuss the following situations:

- (a) Chongo, Collins and Mabvuto hold plot 505 as joint - tenants. Chongo decides that he does not want his share on his death to pass as per the conditions under a joint-tenancy. He converts his interest into that of a tenant in common. Mabvuto then dies before Collins. What is the legal position of the parties' interest in plot 505?
- (b) Muyoba, Chola and Sindiso hold plot 506 as joint-tenants. Muyoba transfers her interest to Mukupa. What is the status of the property?
- (c) Nachalwe, Mwambo and Chibalange hold plot 507m joint-tenants, Nachalwe transfers her interest to Mwambo. Mwambo then dies. What is the legal status of the property?
- (d) Lastone, Bota and Tafuna are joint-tenants. Lastone dies and Bota converts his interests into that of a tenant in common. Tafuna then dies before Bota. What is the legal position?

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

FIRST SEMESTER EXAMINATIONS - OCTOBER, 1999

COMMERCIAL LAW (L331) EXAMINATION

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

- INSTRUCTIONS:**
- 1. ANSWER FOUR QUESTIONS**
 - 2. YOU MAY BRING AND REFER TO CLEAN COPIES OF STATUTES**

QUESTION ONE

P has suffered a stroke and is very ill at the intensive care unit at the University Teaching Hospital. A, an established merchant who has previously sold goods on behalf of P, is concerned about P's health and has approached you for advise as to whether he may ask P to make a ~~of~~ power^{of} attorney authorizing him to sell P's goods. What would be your advice?

QUESTION TWO

Can an agent act for two or more principals who have opposing interests without exposing himself/herself to potential liability for conflict of interest?

QUESTION THREE

In early April, 1999, Mojo Printers Limited had been contracted to manufacture 500,000 pamphlets and brochures for SIDA, a charitable organization, at the price of K10 million. The pamphlets and brochures were to be delivered at SIDA's premise by 3rd May, 1999 in readiness for a workshop scheduled for the 17th May, 1999.

Mojo Printers Limited delivered 250,000 pamphlets and brochures on the 7th of May, and on account of shortage of materials, informed SIDA that they would deliver the balance of order on 15th May, 1999.

Due to internal communication problems, SIDA now realise that they should not have ordered the pamphlets and brochures. They do not want to inform their suppliers, Mojo Printers Limited, of the recent development but they want to avoid collecting the balance of the pamphlets and brochures on the ground that Mojo Printers have delayed delivery.

Mojo Printers attempted to deliver the balance of the order on the 15th of May, 1999, however, SIDA informed them that they were willing to collect the 250,000 pamphlets and brochures but would not pay for them as Mojo Printers Limited had delayed delivery of the items.

Analyse the options available to Mojo Printers Limited and SIDA.

QUESTION FOUR

Can the implied conditions of Sections 13, 14, and 15 of the Sales of Goods Act, 1893 in a contract of sale of goods be negatived or excluded by an express agreement?

QUESTION FIVE

Maamba Colliers of Maamba had agreed to sell and deliver to Inshimbi Foundry of Lusaka 10 tons of coal valued at K10 million. It was agreed that Maamba Colliers would deliver the coal 'as and when required' but that the whole of the order would be delivered by 28th May, 1999.

On the 28th of March, 1999, after 5 tones of coal had been delivered, Maamba Colliers informed Inshimbi Foundry that 3 tons of coal had been destroyed in an accident and that Inshimbi Foundry should bear the loss.

Advise Inshimbi Foundry whether they should bear the loss, or refuse to accept further delivery and what steps they may take to preserve the operation of the Foundry, which depends solely on coal power for energy generation.

QUESTION SIX

Da Fence Company Limited would like to hire out its fences, complete with an alarm system. The price of an electric fence ranges from US\$10.00 to US50.00 per metre. Advise Da Fence Company Limited what hiring entails and on the mandatory provisions of the law on hire purchase agreements.

QUESTION SEVEN

Is the Hire Purchase Act, Cap 399, of the Laws of Zambia old and out-dated? Give reasons for its revision or non-revision, as the case may be.

_____ **END OF EXAMINATION** _____

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER DEFERRED/SUPPLEMENTARY EXAMINATIONS

DECEMBER 1999

COMMERCIAL LAW – L331

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

INSTRUCTIONS : (YOU MAY ANSWER ANY FOUR QUESTIONS. YOU MAY BRING AND REFER TO CLEAN COPIES OF STATUTES).

Q1. "An agent is *prima facie* neither liable upon any agreement into which he enters in a representative capacity nor able to sue on it"

Discuss.

Q2. Pascal, a University of Zambia don, often requests his wife to buy laboratory equipment for him from the National Council for Scientific Research (NCSR). He was admitted at a mental institution for mental illness, and his wife continued to buy equipment from NCSR.

He has just recovered and disclaimed liability for the equipment purchased by his wife from NCSR during the time that he was ill.

- (i) Advise NCSR as to Pascal's liability;
- (ii) What would be your advice if a power of attorney had been made in favour of Pascal's wife?

Q3. Monk recently bought a used car, which Leslie, a car dealer, described 'good as new, 2 years old'.

After six months of use, Monk is told by a mechanic that his car engine needs an overhaul and that it is at least 10 years old.

- (i) Advise Monk;
- (ii) What would be your advice if Monk signed an agreement with Leslie excluding Leslie's liability for any defectiveness of the car?

Q4. Discuss the circumstances in which a seller may:-

- (a) Sue the buyer for the price and interest for goods sold;
- (b) Have a lien against the goods of a buyer; and

(c) Sue a buyer for damages.

Q5. Mojo bought a one year old Mercedes Benz car, South African make, from Maximo, a renowned car dealer at a bargain price of K10,000,000.00 (Ten Million Kwacha); the market price being at least K60,000,000.00 (Sixty Million Kwacha).

With the permission of the Zambian government, South African police and South African insurance companies mounted road blocks in Lusaka City; Mojo's car was impounded because it is a 'hot' car: the car was reported stolen in South Africa, the South African Insurance company had paid out its owner, and now claim that the car is theirs, not Mojo's.

Advise Mojo.

Q6. What is a hire purchase agreement? How is hiring of goods different from bailments and why should it be popular?

Q7. What are the formalities for formation of a hire purchase agreement?

END OF EXAMINATION!

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER: FINAL EXAMINATION

18th October 1999

L341: AMINISTRATIVE LAW

Time: Three Hours

Instructions: Answer Question **One** (1) and any other **Three** (3) Questions

1. The Government of the Republic of Zambia has decided to enact a law to regulate non-governmental organisations (NGOs) to be known as, **The Non-Governmental Organisation Act**. Existing organisations will be required to register anew under the new statute within 30 days of the Act coming into force. Failure to do so, existing organisations will stop to exist. The government did not consult the organisations before the decision was made. The representations they made to government, on the subject, were rejected.

The Chief Government Spokesperson was quoted as saying that the new law is intended to clip the wings of non-governmental organisations, which had become too powerful and were collectively acting as an opposition party. He went on to say that the Act will empower the Minister of Home Affairs to de-register any organisation, which in his opinion was conducting itself in manner inimical to the interests of the party and government.

The Minister of Home Affairs presented the Bill before the National Assembly, where it received overwhelming support from the Members, notwithstanding, protests from various interest groups. The Clerk of the National Assembly later announced that the Bill would be presented to the President for assent on 24 October 1999 to coincide with the independence celebrations.

The non-governmental organisations have retained a lawyer who has applied for judicial review of the decision to enact the law in question. The application is founded on the premise that the enactment of the piece of legislation will affect the rights and interests of the organisations and that they were neither heard nor consulted before the decision was made. It is further argued that government had in fact, in the past, repeatedly assured them that such a piece of legislation will never be enacted without their consent and full involvement. The lawyer has also applied for the stay of the legislative process until after the application was heard and determined by the Court. The application is to be heard on 20 October 1999.

You are a well-known expert in administrative law and the President, fearing controversy, has sought your opinion in the matter. The President wants to know whether the decision taken by the non-governmental organisations to challenge his government's decision to enact the law and to stay the legislative process can be justified within Zambia's constitutional order and in particular whether indeed the High Court can entertain the applications.

Please advise him accordingly.

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You are a well-known expert in administrative law and the President, fearing controversy, has sought your opinion in the matter. The President wants to know whether the decision taken by the non-governmental organisations to challenge his government's decision to enact the law and to stay the legislative process can be justified within Zambia's constitutional order and in particular whether indeed the High Court can entertain the applications.

Please advise him accordingly.

2. On 21 January 1997, Charles Mwanza obtained a judgment in favour of his client against the Government of the Republic of Zambia in the sum of US\$500,000. He accordingly obtained a certificate as required by section 21(1) of the State Proceedings Act, wherein the total amount due and payable to his client under the Judgment was endorsed. After numerous representations to the Government through the Attorney General, to secure the payment of the said amount, he was told that the Government of the Republic of Zambia had no money to satisfy the judgment. He was free to do whatever he wanted. No evidence was ever made available to verify or prove Government's financial incapacity.

Perplexed Mwanza went to court to seek an order of mandamus to compel the Permanent secretary Ministry of Finance to pay in accordance with the provisions of section 21(3).

The said section provides:

If the order (or judgment) provides for any money by way of damages ---, the certificate shall state the amount so payable, and the Permanent secretary, Ministry of Finance, shall --- pay to the person entitled or to the legal practitioner acting for such person in the proceedings to which the order relates the amount appearing by the certificate to be due to him---.

Whilst in Court the lawyer from the Attorney General's chambers, representing the Permanent Secretary, agreed to an Order of Mandamus being given against the Permanent Secretary Ministry of finance, wherein an undertaking was given that the money will be paid by the Permanent Secretary on 30 August 1998.

2. On 21 January 1997, Charles Mwanza obtained a judgment in favour of his client against the Government of the Republic of Zambia in the sum of US\$500,000. He accordingly obtained a certificate as required by section 21(1) of the State Proceedings Act, wherein the total amount due and payable to his client under the Judgment was endorsed. After numerous representations to the Government through the Attorney General, to secure the payment of the said amount, he was told that the Government of the Republic of Zambia had no money to satisfy the judgment. He was free to do whatever he wanted. No evidence was ever made available to verify or prove Government's financial incapacity.

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Whilst in Court the lawyer from the Attorney General's chambers, representing the Permanent Secretary, agreed to an Order of Mandamus being given against the Permanent Secretary Ministry of finance, wherein an undertaking was given that the money will be paid by the Permanent Secretary on 30 August 1998.

The said date passed and no money was paid. Mwanza moved the Court for contempt of court against the Permanent secretary. He specifically applied that he be sent to jail until the money was paid.

In its ruling the Court held:

I am satisfied that the respondent does not dispute the indebtedness to the applicant. Neither is the respondent refusing to pay the judgment sum as by consent order issued herein. I think the crux of the matter is whether the government has money to liquidate this debt owed to the applicant. A Permanent Secretary is just an agent of the government and executes his duties within the confines of the budgetary allocations. If the government has no money that is it. Shall we expect the Permanent Secretary to mint money? Certainly not! I think it is too far fetched to hold the Permanent Secretary personally responsible for government's failure to comply with the consent order issued herein. In the premises I am unable to exercise my discretionary power to grant the order being sought namely to commit the Permanent Secretary to prison for contempt. The application is refused.

Critically evaluate this ruling.

3. Section 12(1) of the Foreign Judgments (Foreign Judgment Enforcement) Act, a law which makes provision for the enforcement in Zambia of judgments give in foreign countries which also accord reciprocal enforcement treatment to judgments given in Zambia, provides:

12(1) If it appears to the President that the treatment in respect of recognition and enforcement accorded by courts of any

foreign country to judgments given in the High Court is substantially less favourable than that accorded by the Courts of the Republic (Zambia) to judgments of the superior courts of that country, the President may by statutory order apply this section to that country.

- 12(2) Except in so far as the President may by order under this section otherwise direct, no proceedings shall be entertained in any court in the Republic for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

Critically examine these provisions and establish whether there are sound legal arguments, which may be advanced to justify the conferment of these powers upon the President.

4. Discuss the impact, if any, of the policies which have been followed by the MMD government since coming to power in 1991, on the administrative structures in Zambia.
5. Section 6(1) of the **Protected Places and Areas Act** provides:

6(1) If, in regard to any area, it appears to the President to be necessary or expedient that special measures should be taken to control the movements and conduct of persons, he may, by statutory order, declare such area to be a protected area.

Discuss the dangers, if any, that may be associated with the exercise by the President of the powers conferred on him by this provision.

6. Discuss some of the policies pursued by the United National Independence party, whilst in power and their impact, if any, on the administrative structures of Central Government.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER DEFERRED/SUPPLEMENTARY EXAMINATION

DECEMBER 1999

L351

INTRODUCTION TO INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

TIME: THREE HOURS (Plus 5 minutes to read the paper).

INSTRUCTIONS: THIS EXAMINATION IS MADE UP OF FIVE QUESTIONS. STUDENTS MAY SELECT ANY FOUR QUESTIONS TO RESPOND TO. PLEASE TRY TO WRITE NEATLY. I WOULD ENCOURAGE STUDENTS TO THINK CAREFULLY BEFORE BEGINNING TO WRITE SO THAT THEY CAN ORGANIZE THEIR THOUGHTS.

- Q1 Many of you have selected a Human Rights issue or topic in which you have a special interest. Using your understanding of the topic and of human rights law, please tell me about your subject. I would like a brief synopsis of the problem/issue, a discussion of why you characterize it as a "human rights" issue, with reference to relevant domestic, regional, customary or international law, and what strategy you would propose for addressing this issue. In answering the last point, reference should be made not only to possible legal remedies. You may want to address strategies for mobilizing public opinion, the possible role of the media, non-governmental organizations and other entities, and other non-legalistic approaches. In suggesting various tactics you should provide assessment of the advantages and disadvantages of each tactic and your assessment of the likelihood of the success of the strategy.
- Q2. The end of conflict, both between and within nations, oftentimes lead to attempts to address human rights violations which have occurred during the conflict. Different settings have oftentimes resulted in marked different responses to deal with such violations. Examples include but are not limited to responses such as the Truth and Reconciliation Commission in South Africa, the Ethiopian Government's Special Prosecutor and Trials, the International Court for Rwanda, the Tribunal for the former Yugoslavia discussed in detail in *Balkan Justice*, different kinds of Truth Commissions in Central American Countries and current efforts by a third country to extradite the former President of Chile. Sometimes there is no response. Based on the cases in our readings or other cases with which you are familiar, please take two or three cases and discuss the pluses and minuses of each case judged against the criteria of satisfying international legal norms, particularly as compared to the standards exemplified in relevant United Nations Covenants and Declarations. Finally, please provide your

assessment of the efficacy of the approach used in your cases for encouraging reconciliation and discouraging future violations.

- Q3. The following is a hypothetical case. Assume that the facts in it are true. Assume that this takes place in a country like Zambia with a democratic constitution, membership in the United Nations, a common law tradition and that the country is a signatory to major human rights conventions of the United Nations. Assume that you are a licensed lawyer in this country.

The case

A young girl was apprehended after being caught shoplifting. She had indeed committed this offense. This was her first offense at law. At her trial she was not represented by counsel. She was sentenced to ten strokes of a cane bamboo rod. The caning would take place with medical supervision.

After the initial trial there had been a sensational press account of the trial which suggested that justice had not been done and that the punishment was "cruel and unusual". You have been approached by the family of the young girl. They are destitute. They are seeking your advice. Your own practice is not doing well economically.

End case hypothetical.

In light of these circumstances, based on your understanding of the facts and the law (domestic, regional, international) and other possible redress options what would you tell the family? Have any human rights been violated? If so, which ones and what remedies, legal and other, might be pursued? Should your advice be limited to assisting the family or are there broader issues which can and should be addressed? If so, what would you recommend? What is your professional responsibility as a lawyer in this case?

- Q4. The subject of humanitarian intervention is a hot topic in international community in Somalia in the early 90s, the failure of the international community act in Rwanda in the mid 90's and the recent intervention in Kosovo have stimulated discussion of this issue. Given what you know about the roots of human rights law in international law, the norms of jus cogens (please define this term), a variety of situations which we have studied, domestic law, relevant international covenants/treaties, recent scholarship outlined in our textbook on the question and other relevant authority/factors assume you are a legal advisor to the President of the United States.

He has asked you to provide a legal brief outlining his options in dealing with the unfolding events in the Chechen area of the former Soviet Union. As you may know, in that region the Russian armed forces are engaged in a brutal campaign to control the region. This campaign is being violently opposed by Chechen local citizens. Credible allegations of massive violations of human rights have been made against both combatant parties. What would you advise the President to do? What are his options under international human rights law? Are there other options? How "realistic" are these options?

assessment of the efficacy of the approach used in your cases for encouraging reconciliation and discouraging future violations.

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Q5. The textbook presented the International Covenant of Economic, Social and Cultural (ECOSOC) Rights to provide an example of how a UN instrument "worked". There was a discussion of treaty ratification, focussed on the process of the United States, including consideration of issues related to reservations, declarations, and understandings. There was a discussion of one State's compliance with reporting requirements and there was a long consideration of how the "system" is structured to deal with non-compliance, including some discussion related to the possible "cultural relativity" of some human rights and the extent to which some right were or were not derogable. The case of punishment in Iran was used to point up the issue of relativity. There was a discussion of "fact finding" and other processes with states which allowed data collection and those which did not. (Some of this was related to regional instruments as well)

Later in the course we considered the working of two Regional Human Rights Courts.

Assume that the "Disappearances" which took place in Argentina long ago and which we studied were happening TODAY. Assume that you are a human rights activist based outside of Argentina. Assume also that you have good information on what is happening inside, including specific information about particular abuses of named individuals. What would be your strategy for addressing these abuses in light of the evolution in international human rights law? What are the pluses and minuses of using the systems set up under the ECOSOC and other UN instruments? (thematic groups, the 1235 and 1503 processes) as opposed to seeking justice in the regional court. What needs to be done to access either system? What other options could you consider? What kind of legal and other defenses might the Government of Argentina raise to your possible approaches.

END OF EXAM!

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**UNIVERSITY FIRST SEMESTER EXAMINATIONS
OCTOBER 1999**

**L351 - INTRODUCTION TO INTERNATIONAL AND REGIONAL HUMAN
RIGHTS LAW**

INSTRUCTIONS: THIS EXAMINATION IS MADE UP OF FIVE QUESTIONS. STUDENTS MAY SELECT ANY FOUR QUESTIONS TO RESPOND TO. PLEASE TRY TO WRITE NEATLY. I WOULD ENCOURAGE STUDENTS TO THINK CAREFULLY BEFORE BEGINNING TO WRITE SO THAT THEY CAN ORGANIZE THEIR THOUGHTS.

The book, *Balkan Justice*, details the establishment of the International War Crimes Tribunal for the former Yugoslavia. It compares and contrasts the Tribunal to the Nuremberg War Trials. It puts the process of establishing and operating the Tribunal into an international legal and political perspective. It outlines in detail the practical issues associated with trying alleged war criminals and gives an eyewitness account of an actual trial. It raises serious questions about the operation and draws a number of lessons about the process. In your view, is the Tribunal an effective instrument of justice and a step forward for International Human Rights Law? Why? In light of the current international system, should there be an international tribunal? Why? Please draw upon the book, course materials and other relevant material in preparing your answer.

Many of you have selected a Human Rights issue or topic in which you have a special interest. Using your understanding of the topic and of human rights law, please tell me about your subject. I would like a brief synopsis of the problem/issue, a discussion of why you characterize it as a "human rights" issue, with reference to relevant domestic, regional, customary or international law, and what strategy you would propose for addressing this issue. In answering the last point, reference should be made not only to possible legal remedies. You may want to address strategies for mobilizing public opinion, the possible role of the media, non-governmental organizations and other entities, and other non-legalistic approaches. In suggesting various tactics you should provide your assessment of the advantages and disadvantages of each tactic and your assessment of the likelihood of the success of the strategy.

3. The subject of humanitarian intervention is a hot topic in international human rights law. The intervention of the international community in Somalia in the early 90's and the failure of the international community to act in Rwanda in the mid 90's have stimulated discussion on this issue. Most recently, the NATO bombings in Serbia have seized the attention of the international community. Given what you know about the roots of human rights law in international law, the norms of jus cogens (please define this term), a variety of situations which we have studied, domestic law, relevant international conventions/treaties, the particular situation in Kosovo which led to these recent events, recent scholarship outlined in our textbook on the question, and any other relevant authority/factors - how would you characterize the NATO intervention and why?

4. The following case was recently reported by a source in Zambia:

Begin Text

In September 1998, a Constable at a police post shot a man who was being held in custody. The man had been apprehended for drunken behaviour. This incident happened shortly after the man was visited by relatives. The Constable's action was defended by the Police Force's Public Relations Officer who said that the police officer was trying to arrest the man for threatening to chop the officer with an ax. The officer shot him and he died. But relatives insist that he had not been charged. A brother in law said that the man had been arrested after his mother took him in for being disorderly. The brother in law said that the Police detained the man for four days without charging him and refused to release him despite his relatives' requests and efforts to have him discharged.

End Text

Assume that the facts in the statement are accurate. You have been approached by the family of the dead man. They are very upset and want "justice". Given what you know about the facts, the law (domestic, regional, international) and other possible redress options, what would you tell the family? Have any human rights been violated? If so, which ones and what remedies, legal and other, might be pursued? Should your advise be limited to assisting the family or are there broader issues which can and should be addressed? If so, what would you recommend. What possible mitigating circumstances might impact on this process which you should be aware of? What might be done to prevent a recurrence of this kind of happening?

5. The textbook presented the International Covenant of Economic, Social and Cultural (ECOSOC) Rights to provide an example of how a UN instrument "worked". There was a discussion of treaty ratification, focused on the process in the United States, including consideration of issues related to reservations, declarations and understandings. There was a discussion of one State's compliance with reporting requirements and there was a long consideration of how the "system" is structured to deal with non-compliance, including some discussion related to the possible "cultural relativity" of some human rights and the extent to which some rights were or were not derogable. The case of punishment in Iran was used to point up the issue of relativity.

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There was a discussion of “fact finding” and other processes with States which allowed data collection and those which did not. (Some of this was related to Regional Instruments as well).

Later in the course, we considered the workings of two Regional Human Rights Courts. One of these, the European Court appears to work quite well.

Remembering that many of the “positive” rights of the International Covenant on Economic, Social and Political Rights have been conditioned by a State’s ability to comply to “the maximum of its available resources”, assume that you are representing a pregnant mother in Ireland whose social security (welfare) benefits have been suspended and her passport revoked because she seeks to leave the country for France for an abortion. Abortion is legal in France. Welfare benefits for pregnant mothers are listed as a right under the ECOSOC covenant. The expectant mother is a minor and is in the second month of her pregnancy when she and her parents consult with you. Her indigent parents support her desire for an abortion. What would you advise the client? For this particular client, given her special situation, what are the pluses and minuses of using the systems set up under the ECOSOC and other UN instruments (thematic groups, the 1235 and 1503 processes) as opposed to seeking justice in the European Court. What needs to be done to access either system? What other options are available to her? What kinds of legal and other defenses might the Irish Government raise to your client’s case?

END OF EXAMINATION

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

**GENERAL PRINCIPLES OF THE LAW OF BUSINESS ASSOCIATIONS L421
FIRST SEMESTER EXAMINATION**

TIME: THREE (3) HOURS

**ANSWER: FOUR (4) QUESTIONS INCLUDING THE FIRST QUESTION IN
SECTION I**

**SECTION I QUESTION - MANDATORY
(31 Marks)**

1. Zambezi has been in business for a long time, operating a number of tuntembas in the city. He has staff that help him manage his businesses. Unfortunately, the Lusaka City Council (LCC) decided to close all tuntembas in the city and this forced Zambezi to adopt a new approach to continue in business. He suggested to his fellow business persons who similarly had operated tuntembas to team up, the four of them, and rent premises at Kamwala. Because of the urgency of the matter, they quickly put money together, contributing K200,000.00 each. They appointed Moono to be a storekeeper, Monde to be the Manager, and Luangwa to be the purchaser for the business. It was agreed that Zambezi would be the general supervisor. The business went on very well for some time. However, trouble started when others accidentally found out that Luangwa was running another shop and it was booming as he gave it priority in purchases. Luangwa pleaded that he did not see anything wrong with what he had done because he was using his own money, but others would not listen. They accused him of being unfaithful to them. While this was still going on, someone who claimed to be a creditor to the business came to demand payment of K4,000,000.00 allegedly for stocks bought on credit by Moono for the shop. The others were furious

demanding that they should have been consulted. They threatened not to honour the commitment. A few days later Zambezi informed the group that he had hired a typist to be paid K80,000.00 per month and an accounts clerk for K120,000.00 per month to help in the management of the shop. The others were not amused because both the typist and the accounts clerk happen to be Zambezi's relatives. They accused him of nepotism and they would not agree to the two being employed. They insisted that they should have been consulted or at least asked if they had relatives to employ.

Their business arrangement was at the brink of breaking up, but they were advised by a friend to see a lawyer to assist them organize their business. They have come to see you. Assist them organize a business from the choice of an appropriate business association to its formation, and to providing a legal opinion to help them solve the problems that have arisen as above mentioned.

SECTION 2

(23 Marks each question)

2. It could be said that a cooperative society is the ideal form of business association for community based business. Analyze features of a cooperative society that may support this statement.
3. Limpompo wishes to set up a business on her own. She wanted a unique name for her business. She settled for Limpompo Stars. She is not however, sure what form this business should take. Neither does she want something complicated. She has

come to you as a business lawyer for assistance on how to go about setting up her business. Help her.

Statutory corporations are basically a product of socio-economic factors of our society. Discuss this statement in a historical context relating this to the nature of the corporation, and the public control mechanism employed.

Outline the organs of a cooperative society under the Cooperative Societies Act, 1997, analyzing the function of each organ and their relationship inter se.

Partnership law has principles that are intended to give protection to those dealing with partnerships. Discuss these principles.

Discuss how the Cooperative Societies Act attempts at striking a balance between the interests of the shareholders as an investor and the interests of the general membership and those of the Society as an entity.

END OF EXAMINATION

THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW
UNIVERSITY EXAMINATIONS

L431 INTERNATIONAL LAW

26TH OCTOBER, 1999

INSTRUCTIONS

TIME ALLOWED: THREE (3) HOURS

ATTEMPT ANY FOUR QUESTIONS

CANDIDATES MAY CONSULT ANY INTERNATIONAL TREATY THEY WISH

1. Write short notes on the following:
 - (i) Asylum Case (195)
 - (ii) Barcelona Traction Case (1970)
 - (iii) Chorzow Factory Case (1928)
 - (iv) Haile Selassie v Cable & Wireless (No.2) (1939)
 - (v) Nottebohm Case (1995)
 - (vi) Extradition
 - (vii) Opinion juris sive necessitatis

2. (a) What is international humanitarian law and what is its purpose?
(b) What is the difference in legal significance, if any, between signing but not ratifying, and signing and ratifying, a treaty?
(c) Discuss the admissibility of reservations to a multilateral treat.

3. (a) To what extent, if any, has the character of international society shaped that of international law rather than vice versa?
(b) What is the normative status of (i) protective principle, (ii) uti possidetis, (iii) tertium quid, (iv) exterritoriality, (v) baseline, (vi) diplomatic relations.
Explain *(via declaration, (ii) a resolution*

4. (a) Show the extent to which the position of the individual as an object of international law has undergone changes since the end of World War II
(b) Distinguish between:
 - (i) sanctity and relativity of treaties

- (ii) pacta sunt servanda and jus cogens
- (iii) jus soli and jus sanguinis
- (iv) de facto and de jure recognition
- (v) national and dinternational rivers
- (vi) peace-keeping and peacemaking

5. (a) The World Bank has given a loan to the Government of Bantuland for the construction of a road in Kupe Pronince, which is subesquently ceded to the contiguous Republic of Edom. The Government of Edom refuses to accept any responsibility for the loan. Discuss.

(b) Consider the nature and scope of the jurisdiction of a state over the following:

- (i) A foreigner to whin, by mistake, the state exercising jurisdiction has granted a passport and who has committed abroad an offence punishable only if committed by a national.
- (ii) The hijacking of aircraft.
- (iii) Crimes against diplomats.
- (iv) Martians who have attaked astronauts on a scientific expedition on Mars.

6. (a) Differentiate between monism and dualism and show the extent to which international law is applicable within the state.

(b) Discuss the meaning of the following terms:

- (i) compulsory arbitration
- (ii) asylum
- (iii) Calvo clause
- (iv) domestic jurisdiction
- (v) rule of double criminality
- (vi) exhaustion of local remedies

7. (a) Why is international law obligatory and binding?

(b) Consider the principle according to which the state has exclusive competence in regard to its own territory.

(c) Define:

'the sea'

'the contiguous zone'

'the exclusive economic zone'

and explain the rules of international law by reference to which

the baseline of the territorial sea is drawn, and

the territorial jurisdiction over a border river is divided between two riparian states.

PROF. C. ANYANGWE

END OF EXAMINATIONS

UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

FIRST SEMESTER DEFERRED/SUPPLEMENTARY EXAMINATIONS DECEMBER 1999

INTERNATIONAL LAW

L431

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

INSTRUCTIONS : Answer any four questions

- Q1. There are several views relating to reservations that may be made by a state to a treaty it intends to accept. Discuss these views in sufficient detail.
- Q2. In a Memorandum submitted to the Secretary General of the United Nations in 1949 headed "Survey of International Law in Relation to the work of codification of the International Law Commission" it was stated on page 24 that:
- "...Sovereign and independent states are the principal – though not exclusive – subject of international law".
- Name and describe the rest of these subjects of international law that the Secretary-General had in mind including their essential attributes.
- Q3. Describe and comment on the various sources of international law.
- Q4. Explain and comment upon the relationship between municipal law on the one hand and international law on the other.
- Q5. "Recognition gives rise to Legal consequences affecting rights, powers and privileges of the recognised state or government both at international and municipal law of the state that has given the recognition". Discuss all the Legal consequences of recognition in municipal law.
- Q6. Discuss the requirements for the existence of a rule of customary international law.

END OF EXAMS.

**THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW**

L451 EXAMINATION

TIME: THREE (3) HOURS

**ANSWER: FOUR (4) QUESTIONS INCLUDING QUESTION ONE (1)
WHICH IS MANDATORY.**

**SECTION 1-MANDATORY
(31 MARKS)**

1. Njombolo is a business person with an agricultural processing plant in country A. He managed his company successfully during the time when parastatals were predominant. Since liberalization, his business has gradually been going under. Njombolo and other business persons are alleging that it is dumping from “the South” causing them problems. Njombolo has come to your law firm to consult you on how to deal with the problem of dumping. Advise him, and in your advise indicate a country like Zambia may take “protective measures” for its industry under the current international trade regulation structure.

SECTION 2

(23 MARKS EACH QUESTION)

2. The MFN clause is one of the “cornerstone” principles of GATT. Explain this principle in relation to Art. II of GATT.
3. Write briefly on each of the following:-
- (i) the principle of national treatment
 - (ii) rules on technical barriers to trade.

4. State the rationale for regional economic integration under GATT clearly delimiting the various conceptual stages of economic integration and their benefits, using COMESA as an example as much as you can..
5. The negotiating strength of developing countries has over the years come to bear on the international trade legal system through the various schemes intended to assist commodity trade. Briefly discuss at least two (2) such schemes.
- 6.. Discuss the three models of trade regulation covered in the course, assessing their propriety against rules of import licensing in the Agreement on Import Licensing Procedures and the GATT rules on export control measures, and also assessing the models of trade regulation for Zambia as a developing country.
7. Discuss the dispute settlement procedure under the World Trade Organization and its suitability for developing countries within the international trade system.

END OF EXAM

UNIVERSITY OF ZAMBIA

FIRST SEMESTER DEFERRED/SUPPLEMENTARY EXAMINATIONS

DECEMBER 1999

L461

INTELLECTUAL PROPERTY LAW

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

INSTRUCTIONS: ANSWER QUESTION ONE AND THREE OTHERS.

- Q.1 Describe briefly the origins and development of Intellectual property rights.
- Q.2 Describe the function of Trade Marks.
- Q.3 Write short notes on any of the following.
- (a) Economic Justification of Intellectual Property Rights
 - (b) Patentability
 - (c) Remedies available to the patent owner.
 - (d) Licensing
- Q.4 ..."Copyright protection is above all one of the means of promoting, enriching and disseminating the national cultural heritage. A country's development depends to a very great extent on the creativity of its people and its dissemination ..."
- Discuss.
- Q.5 Sam Ngoma is a popular musician who has just released a popular record entitled "On the verge of the next millennium." Soon after releasing the record he assigned the copyright to Sangwapo Music systems Limited. The Managing Director of Sangwapo Music Systems Limited, Mr. John Banda has discovered that "the record on the verge of the next millennium" has been copied by some pirates. The record is sold on tapes and records illicitly from some backyard "studio" in Mtendere. Mr. John Banda is extremely infuriated by this discovery and decides to approach you for legal advice as well as the course of action to take in the circumstances.

Please advise

Q.6 Distinguish the following

- (a) A provisional and a complete specification.
- (b) A patent and a Trade Mark
- (c) Anton Piller order and an Injunction
- (d) Service Marks and Certification Marks

END OF EXAM.

THE UNIVERSITY OF ZAMBIA

UNIVERSITY EXAMINATIONS - MAY 1999

L620: INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

INSTRUCTIONS

1. ANSWER **FOUR (4)** QUESTIONS
 2. YOU ARE ALLOWED TO USE INTERNATIONAL INSTRUMENTS AS WELL AS RELEVANT DOMESTIC LEGISLATION
 3. **TIME:** THREE (3) HOURS PLUS 5 MINUTES TO READ THE QUESTIONS
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1. One of the major means of monitoring implementation of international human rights treaty provisions by states is through the system of reporting. What are the seven major functions served by reporting?
2. To what extent has the idea of human rights been grounded in natural law theory?
3. Discuss the legal effect and political importance of the Universal Declaration of Human Rights, 1948.
4. (a) What is International Humanitarian Law and what are its main objectives?
(b) What are the main sources of international humanitarian law?
(c) How should persons in the power of a party to the conflict be treated?
5. It has been argued that women's rights are human rights.
(a) Why should there be separate rights for women?
(b) What are the factors inhibiting full enjoyment of human rights by women?
(c) What obligations do state parties who ratify the Convention on the Elimination of All Forms of Discrimination Against Women assume?

6. Discuss the role of the United Nations High Commissioner for Human Rights. What are the likely obstacles to the effectiveness of this office?
7.
 - (a) Who is a refugee in international law? In what way is the *1967 Protocol Relating to the Status of Refugees* significant?
 - (b) How does the definition of refugee under the *OAU Refug Convention* differ from the international definition?
 - (c) What categories of people are disqualified from claiming refugee status under international law?