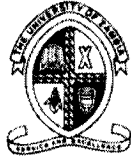


THE UNIVERSITY OF ZAMBIA
SCHOOL OF LAW

2014/2015 MID YEAR EXAMINATIONS

1. LPU 2911 –Legal process
2. LPU 2951 –Constitutional Law
3. LPU 3911 –Law of Evidence
4. LPU 3975 –Human Rights Law
5. LPU 4041 –International Law
6. LPU 4061 –International trade law
7. LPU 4135 –Disability Law.



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**LEGAL PROCESS- LPU 2911
FINAL EXAMINATION**

FRIDAY 6TH MARCH, 2015

SPORTS HALL

09:00 – 12:00

INSTRUCTIONS:

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

PART 1

Question One (Compulsory)

James Phiri was a member of the Orange Party and decided to stand on his party ticket as the presidential candidate in the general elections in 2011. The elections were held and Phiri lost the election to the Yellow Party candidate, Julia Zulu. Dissatisfied with the results, James decided to hire Lily Lawyer to advise him and represent him in court. Lily Lawyer instituted proceedings in the High Court in Lusaka by way of petition. The matter was allocated to Judge Sala who gave judgment in favour of Julia. James, through his lawyer Lily, then decided to take his matter to the High Court in Ndola. The judge in Ndola heard the matter and passed judgment in favour of James by declaring that the election of Julia was null and void. You have just passed your bar exams and Julia has approached you to represent her in her appeal to the Supreme Court. Identify and discuss her possible grounds of appeal.

(18 marks)

PART 2

Question Two

Customary law is one of the sources of law in the Zambian legal system. The application of customary law can however be ousted in certain circumstances. With the aid of case law and statutory authority, discuss instances where the application of customary law is restricted in Zambia.

(14 marks)

Question Three

The legislature has the exclusive authority to make acts of parliament in Zambia. However these acts of parliament are not drafted with perfect clarity. When a defect appears the judges cannot fold their hands and do nothing about it. It is the duty of the judge to find the intention of parliament. With the aid of authority, explain the various methods utilised by judges when interpreting statutes.

(14 marks)

PART 3

Question Four

Discuss the geographical, monetary and subject matter jurisdiction of the Subordinate Courts in Zambia.

(14 marks)

Question Five

Judith Lungu and Lombe Mweemba entered into a divorce agreement. In the agreement, there was a clause that stated that any dispute arising from or relating to this contract will be submitted to arbitration. A dispute relating to the amount of maintenance Lombe was to pay to Judith arose and Judith filed a complaint into the High Court. The High Court judge, on seeing the arbitration clause submitted the dispute to arbitration. The parties chose arbitrators in accordance with the agreement and an award was rendered. Lombe Mweemba, dissatisfied with the award filed a notice of appeal and a record of appeal in the Principal Registry of the High Court. The matter is now before you in the High Court. Write an opinion addressing all the key issues in the facts laid out.

(14 marks)

PART 4

Question Six

With the aid of case law, discuss the relationship between law and society.

(14 marks)

Question Seven

Write short notes on any two of the following:

- (a) Civil Law System;
- (b) English Law Extent of Application Act, CAP 11 of the Laws of Zambia;
- (c) Kaniki v Jarius (1967) Z.R 7; or

(d) Judicial Law Making.

(14 marks)

TOTAL: 60 MARKS

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

CONSTITUTIONAL LAW LPU 2951

MID YEAR FINAL EXAMINATION

Monday 2 March 2015 14:00 – 17:00

INSTRUCTIONS:

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

PART A

QUESTION ONE IS COMPULSORY

Maringo's right to privacy is violated when the Ministry of Mines, Maringo's employer discloses Maringo's HIV status to the colleagues. Maringo denies being HIV positive and further states that even if he was HIV positive, the Ministry does not have the right to disclose such information to other employees.

Maringo sues the Ministry for violation of the right to privacy in the High Court, arguing that the Constitution guarantees a right to privacy and that it is a duty of the High Court to ensure rights guaranteed in the Constitution are safeguarded. Maringo further argues that the disclosure of his status constitute a violation of his right to privacy, the act is unconstitutional and against the rule of law.

- a) Draft a reasoned judgement clarifying the law on the Constitutional issues raised in the given facts.
- b) Explain what the Executive can do to redress the situation.
- c) Explain what the Legislature can do to redress the situation.

18 marks

PART B

QUESTION TWO

The honourable Minister of Justice, Dr Chadenza was a nominated Member of Parliament (MP). On February 10, 2015 Dr Chadenza resigned as an MP. The President has since nominated to parliament Professor Magna Carta and subsequently appointed him Minister of Justice. It has however come to light that Professor Magna Carta was in 2000 convicted by a Magistrate Court for obtaining pecuniary advantage by false pretences. Professor Magna Carta was sentenced to six months imprisonment suspended for one year.

Discuss the Constitutionality of Professor Magna Carta's appointment.

14 Marks

QUESTION THREE

Outline the composition, functions and powers of a Head of State.

Discuss the consequences of an all powerful executive branch of government. In your view, should the body be maintained in its present form? Give reasons for your answer.

14 Marks

PART C

QUESTION FOUR

The Republic of Milisi has a Constitution similar to that of Zambia. The People's Party has just won a landslide victory in the 20th January Presidential and Parliamentary elections. The new President has declared in his inaugural speech that he will ensure the Republic of Milisi is governed on the basis of the concept of Constitutionalism.

The Leader of the main opposition party is not convinced about the President's representation of Constitutionalism. The leader of the opposition party has since approached you and requested for an explanation of the meaning of the term constitutionalism.

Discuss the term Constitutionalism giving examples of executive actions that would be regarded as being contrary to the concept of constitutionalism.

14 Marks

QUESTION FIVE

On 12 February 2015, Norman Tujilijili, leader of one of the opposition parties was picked from Jack Mall by three officers who identified themselves as being officers from the Office of the President and acting on the instructions of the President. Norman Tujilijili's family worried about his whereabouts, reported him as missing at the local Police Station, where they were informed by the officer in charge that Norman Tujilijili was being held at some undisclosed location in Muchinga Province. Norman Tujilijili was detained because he had disrespected the President, by not standing still when the Presidential motorcade was on its way to the airport. The family are now seeking to consult you on whether the detention is Constitutional.

Draft a legal opinion clarifying the law on the matters highlighted above.

14 Marks

PART D

QUESTION SIX

Distinguish between a Presidential system of government and a Parliamentary system of government highlighting the two major distinctions between the two.

7 Marks

Name two countries that have presidential systems of government and two that have a parliamentary system arrangement.

7 Marks

QUESTION SEVEN

Zambia has enjoyed political independence for 50 years. Despite this milestone, the Zambian people have continued demanding for a people –driven Constitution

Critically analyse the reasons for Zambia’s urgent need for a new constitution.

14 Marks

End of Examination



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

**HUMAN RIGHTS LAW – LPU 3975
MID YEAR EXAMINATION**

4TH MARCH 2015

09:00 – 12:00 HOURS

SPORTS HALL

INSTRUCTIONS:

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

PART A

Question 1 (Compulsory)

Buloziland, a southern African country, is a dualist state as reflected in section 3 of its Constitution which provides that 'all treaties duly ratified have domestic effect only upon their domestication'. In fact, Buloziland has not domesticated any of the treaties it has ratified. The Constitution of Buloziland contains a justiciable Bill of Rights whose content is similar to the Universal Declaration of Human Rights. The highest court on all constitutional matters in the country is the Constitutional Court. Under the law of Buloziland, the age of majority is 18. Buloziland has ratified many international and regional instruments including the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the UN Convention on the Rights of the Child (CRC); the UN Convention on the Rights of Persons with Disabilities (CRPD); the African Charter on Human and Peoples' Rights (African Charter); and the African Charter on the Rights and Welfare of the Child (African Children's Charter); and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol). In respect of the CRPD, Buloziland made the following reservations and declarations:

Buloziland understands that Article 23(1)(b) and Article 25(a) of the Convention shall not be interpreted in a way that confers an individual right to abortion or mandating a state party to provide access thereto, unless that right is guaranteed by the national law.

Article 23(1)(a) of the Convention refers to the recognition of the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses. By virtue of Article 46 of the Convention, the Royal Kingdom of Buloziland reserves the right not to apply Article 23(1)(a) of the Convention until relevant domestic legislation is amended. Until the withdrawal of the reservation, a disabled person whose disability results from a mental illness or mental disability and is of marriageable age cannot contract marriage without the court's approval, provided that the health or mental condition of the disabled person does not endanger the marriage or the health of any prospective children of the marriage, and that such a person has not been fully incapacitated.

Fefe is an 18 year old Bulozilandian who suffers from a mental illness. Although 18, she has the mental age of a 7 year old and is in grade 2. Fefe has a boyfriend (John) who has promised to marry her one day. On 24 August 2011, Fefe arrived home after school feeling nauseous and ill.

Fefe's mother (Maria) took Fefe to the doctor the next day. The district doctor (Dr Small) conducted blood tests which revealed that Fefe was pregnant. Dr Small informed Fefe's mother that section 5 of the Abortion Act of 1985 provides as follows:

A disabled pregnant girl has to undergo a termination of the pregnancy if there exists a substantial risk that the foetus would suffer from a severe physical or mental abnormality or if the continuation of the pregnancy would result in severe malformation of the foetus.

Dr Small explained to Maria that Fefe was legally obliged to undergo a medical assessment as soon as possible to determine if a substantial risk exists that her foetus would suffer from a severe physical or mental abnormality. Dr Small scheduled a medical assessment for Fefe for the following week. Fefe made it clear to Dr Small that she did not want to undergo these medical tests.

On 30 October 2011, a gynaecologist tested Fefe's amniotic fluid and the results indicated that the foetus she was carrying had Down's syndrome (trisomy-21). The report also indicated that she was approximately 18 weeks pregnant. On the strength of the test results, Dr Small advised that Fefe would be required to terminate the pregnancy in terms of section 5 of the Abortion Act of 1985.

Fefe, John and Maria are very unhappy with this conclusion. They are eager to keep the baby. Assume that the matter has already been decided upon by the Constitutional Court which is the highest court of the land, and the decision was not in their favour. John says that he is mentally, socially and financially stable enough to care for Fefe and the baby. Their plan is to get married soon and to have more children. Fefe, John and Maria decide to challenge the decision by lodging a complaint before the African Court on Human and peoples' Rights (African Court).

- (i) What are the procedural requirements that have to be satisfied before the African Court can hear this matter? **(6 marks)**
- (ii) What is a reservation? Is the reservation entered by the State of Buloziland valid? Substantiate. **(4 marks)**
- (iii) Are there any rights of Fefe's which are violated (actually or potentially) by the State of Buloziland? Explain. **(8 marks)**

(Total – 18 marks)

PART B

Question 2

The concept of human rights is ever evolving: what was inconceivable at one point in time is argued to be a human right at another time – e.g. the right to development and the right to sexual orientation. How does one reconcile this with the concept that human rights are inherent and therefore each human being has them from birth till death? **(14 marks)**

Question 3

The right to found a family and the state's obligation to protect the family unit is found in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Explain how this right is both a social and economic right and a civil and political right. What does this say about the categorisation of rights? **(14 marks)**

PART C

Question 4

Tamara is a Lusaka resident who sells cocaine. The police have been tipped about this, but they have never been able to prove it. This is because as soon as she gets her supply, Tamara packs it in small quantities; carefully wraps them in plastic; then she swallows the small packs. This is why the police have not found anything the few times they have raided her apartment.

One day, a client who lives in Kabwe called and ordered 10 packs of cocaine from Tamara. Tamara sourced the 10, wrapped and swallowed them; and began her journey to Kabwe. The bus that Tamara was travelling on stopped at a police check point. One of the police officers recognised Tamara and approached her. He said, 'Young lady, can you please step aside and come with me inside the police post?' 'Sure', replied Tamara.

Inside the police post, three officers got together and questioned Tamara. 'Where are you going, and why?' Asked the first officer. 'I am going to Kabwe to visit my friend,' replied Tamara. 'How long will you be gone for; and what is the purpose of your visit?', asked the second officer. 'I will be gone for a day or two. I will be visiting my friend because we have not seen each other in a while.' The officers noticed that Tamara was not carrying a change of clothes, tooth brush or any toiletries, which was unusual for a girl so 'polished' and who would be gone for a day or two.

The officer who recognised Tamara notified the other two officers that the young lady is rumoured to be a drug dealer. The third officer asked Tamara, 'is it true you deal in drugs? Could that be why you are travelling to Kabwe?' Tamara laughed, 'that is the craziest thing I have ever heard! Do I look like a drug dealer to you? If you think I have drugs on me, why don't you search me and find them?' The officers were not happy about her cheekiness. The first officer took on the challenge to search her, and he began to conduct a full body search. While doing so, he fondled her breasts. Tamara retaliated by biting the officer's hand. The second officer jumped to his feet and slapped Tamara for biting his friend. The third officer kicked her in the stomach and squeezed her throat saying, 'how dare you disrespect an officer! You do that one more time and you will regret the day you were born!'

The officer squeezed Tamara's throat so hard, she began coughing uncontrollably. Tamara coughed so hard that the last pack of cocaine which she swallowed just before leaving her apartment flew out of her mouth and fell on the floor. 'Aha! And what is that, young lady?' Asked the first officer. 'It is nothing,' Tamara quickly replied as she tried to reach out and pick it. However, the second officer got to it before she did. When the three officers realised what it was, they decided to shove the handle of a toilet brush down Tamara's throat; and in no time, Tamara threw up the remaining 9 packs of cocaine.

Tamara has been charged and is currently under detention. She is informed that she has a right to a lawyer, and she engages you. While she acknowledges her wrongs, Tamara is adamant that her rights guaranteed in the Zambian Constitution have been violated; and that the evidence obtained cannot be used against her. Advise Tamara on her rights, and substantiate using written law and case law. **(14 marks)**

Question 5

The following is an extract, in part, from the case of *Sammy Kambilima Ngati, Mumba Chishimba Edward, Davy Musonda Chanda v The People* SCZ No. 14 of 2003:

The three appellants: Sammy Kambilima Ngati, Mumba Chishimba Edward and Davy Musonda Chanda were jointly charged. The first two counts were murder, contrary to section 200 of the Penal Code, CAP 87. The third count was of aggravated robbery, contrary to section 294(2) of the Penal Code, CAP 87.

The particulars were that the appellants, on 1st May 1997, within the Pedicle in the Mokambo District of the Democratic Republic of Congo, jointly and whilst acting

together and whilst armed with a gun, did rob Juliet Chilufya of 1 bag, 1 blanket, 2 dresses, 1 chitenge material, 10 kg sugar, K35,000 cash, all together valued at K112,500, the property of the said Juliet Chilufya; and at or immediately before or immediately after the time of such robbery, did use or threatened to use actual violence in order to obtain or retain the said property.

Juliet Chilufya testified that she lives in Chingola. On 1st May 1997, she was on her way to Mansa. She was given a lift in a land cruiser in Mufulira and there were three women and two men in the vehicle. As they were driving on Pedicle Road, they were stopped by one man whom the driver recognised. As the driver was exchanging greetings with this man, four men sprung from the bush, one armed with a gun and the other three with knives. ... The man armed with a gun fired in the air and the driver surrendered the keys. When they got the keys, they ordered all those in the vehicle to come out and they were taken into the bush while the man who had stopped the vehicle jumped into the vehicle and drove it into the bush. In the bush, the four men were joined by the man who had driven the vehicle away and the women were then raped. After raping the women, they were told to stand up. One of the men then stabbed the other man they came with in the vehicle. On seeing this, Juliet Chilufya shouted but she was kicked in the pubic area and she lost consciousness.

Assume that the three accused persons have been tried and convicted on the count of aggravated robbery.

- (i) Identify and outline the human rights that are violated by the conduct of the three convicted persons. **(6 marks)**
- (ii) What human rights would be violated by the state should it impose the death penalty on the three convicted persons? **(4 marks)**
- (iii) State whether or not the death penalty is an appropriate form of punishment. **(4 marks)**

(Total – 14 marks)

PART D

Question 6

Write short notes on the following:

- Vertical and horizontal application of human rights, and whether or not the state can be involved in both; and
- The uniqueness of the African Charter on the Rights and Welfare of the Child.

- **(14 marks)**

Question 7

In his book *Human Rights Law in Zambia – Cases and Materials*, Prof. Alfred Chanda writes on page 296 that:

The Commission for Investigations has been a total failure not only because of its lack of effective powers but because it has been denied adequate financing and other logistics. In its present form, it is therefore moribund and irrelevant to Zambia.

Discuss the strengths and weakness of the Commission for Investigations. State whether or not you agree with Prof. Chanda; and substantiate why.

(14 marks)

TOTAL: 60 MARKS

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

INTERNATIONAL LAW LPU 4041

MID YEAR FINAL EXAMINATION

Friday 6 March 2015

09:00 – 12:00

INSTRUCTIONS:

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

PART A

QUESTION ONE IS COMPULSORY

Below is a news item from Mwebantu News Media of December 2, 2014

Pirates Held in Attack on the Republic of Norce Warship

Gunmen suspected of being Somali pirates fired on a Republic of Norce Military Warship off East Africa early Tuesday in what appeared to be a ransom – seeking attack, officials said. The warship, Called Futi, returned fire, sinking the men’s boat and confiscating a nearby mothership. The military officials detained five suspects, said Lt Boom, a spokesman. The Republic of Norce, commander has issued a statement that the five men would remain in Norce custody for now.

- a) Based on issues raised in the above news item, discuss the rights and duties of individuals under international law
- b) Explain with authority the type of jurisdiction the country or countries seeking to prosecute the detained individuals above can rely upon?

18 marks

PART B

QUESTION TWO

The Republic of Chalo Chesu invokes responsibility of the Republic of Muzi wangu on the basis of violation of a *jus cogens* rule. Explain the institutional framework or procedures available to Republic of Chalo Chesu to bring a claim against the Republic of Muzi wangu in international law. What are the criteria for admissibility of the claim?

14 Marks

QUESTION THREE

Taz and Mozam both claim sovereignty over the Windscale Islands, an archipelago in the Eden Ocean. There is evidence indicating that most of the people on the Island want independence from Taz, the current administrator, and very few express a desire to unify with Mozam.

Taz’s claim is based on its discovery of Islands in 1777 and a subsequent settlement by a Tazian naval crew that was established in 1813. Mozam’s claim is based on a settlement that was inhabited in 1778 and 1779 by citizens of Publand - Mozam’s former colonial administrator. Mozam declared independence over the Islands in 1819; However Taz and Mozam only officially recognised its independence in 1827 and 1839, respectively.

Taz has continuously exercised control over the entire Windscale Islands, and the UN recognises the Islands as a non- self governing territory of Taz. Taz established an independent Assembly on the Island in 1903, allowing the Islanders to express their views to the Tazian authorities, who retained sole authority. In 2015, a referendum was held in which the vast majority of Islanders voted for independence over unification with Taz or Mozam. Taz endorsed the result and pledged its support in obtaining independence for the Islands, while Mozam condemned it as illegal and pledged to conquer the Islands to its control.

- (a) Does Taz have a superior claim to Mozam of territorial sovereignty over the Windscale Islands?
- (b) Do the Islands qualify as a state under either the declaratory or constitutive theory of statehood?

14 Marks

PART C

QUESTION FOUR

Militant Zambian students studying in London entered the Zambian High Commission (Embassy) situated in central London to deliver a petition protesting the unprecedented rise in the price of mealie meal in Zambia. After they had spent a night on the premises, Embassy officials requested the British Police to come to the Embassy. Several Police officers, headed by an Assistant Superintendent, entered the Embassy and held discussions with the High Commissioner who then gave the Assistant Superintendent a formal written request asking the police to enter the Embassy and remove the students from the premises.

The High Commissioner, in the presence of the police, asked the students to leave within five minutes. When they refused to depart, they were placed under arrest and physically carried away from the Embassy premises.

The students are now appearing in a London Court and you are the presiding magistrate. The students contend that the British police had no authority to enter the Zambian Embassy for the purpose of arresting Zambian nationals for a crime committed within the confines of the Embassy.

Examine the relevant international customs, treaties and domestic legislation in order to ascertain the nature of issues raised and pronounce a verdict.

14 Marks

QUESTION FIVE

Nigeria an independent state neighbouring Ghana has experienced political turmoil due to civil strife between the rebel group *Boko haram* and the government of Nigeria. Late one

evening, the Nigerian government forces bombarded the *Boko haram* strongholds. In the ensuing confusion, Ola a member of the *Boko haram* rebel group flees Nigeria into Ghana.

Ola reported to the Ghanaian Immigration Officials and was granted refugee status on application. The Nigerian Government heard of the presence of Ola in Ghana and made diplomatic representations requesting the Ghanaian government to hand Ola over to the Nigerian authorities. The Ghanaian Government has consulted you for legal advice on the following issues;

- (a) Whether it is lawful to extradite Ola despite the absence of an existing bilateral treaty of extradition between Nigeria and Ghana.
- (b) Whether the act of granting Asylum to Ola on legal grounds constitute an act of hostility towards the Nigerian government.
- (c) Explain whether there are available options to the Ghanaian government other than extraditing Ola to Nigeria.

14 Marks

PART D

QUESTION SIX

In the *Lotus Case* (France v Turkey) 1927 PCIJ, Ser. A, no. 10 The PCIJ held

The rules of international law binding upon states therefore emanate from their own free will as expressed in conventions or by usage generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of states cannot therefore be presumed.....”

Is the above comment still true today? Discuss relevant sources of international Law to justify your arguments.

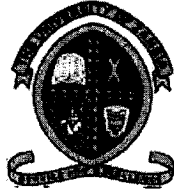
14 Marks

QUESTION SEVEN

Explain the ICJ’s rationale in the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States) 1986 I.C.J. 14. 103 – 23 in recognising that Article 51 of the UN charter provides an inherent or natural right of states to self-defence.

14 Marks

End of Examination



UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

INTERNATIONAL TRADE LAW (LPU 4061)

EXAMINATION

TERM 2/2015

Instructions

- 1. The duration of this examination is Three (3) hours.**
 - 2. Answer the compulsory question in Section A and any other three questions in Section B. In total you should have answered four questions in this examination.**
 - 3. No materials other than your pen and ruler should be on your desk.**
-

SECTION A

Question 1

Opengo-Odong Ltd, which is a Ugandan corporation, manufactures Waragi, which is a clear alcoholic beverage. The corporation wishes to export their drink to Zambia. However, Opengo-Odong Ltd has encountered the following problems:

- (a) Gin produced in China is charged a customs duty of 2% whilst the Waragi from Uganda is charged 25%. Advise.
- (b) The government of Zambia has imposed a value added tax of 50% on Waragi, whilst Gin produced in Zambia is only charged at a rate of 2%. Advise.
- (c) Would your answer to (b) be any different, if it was discovered that the Zambian government imposed such hefty taxes, because Waragi is known to cause multiple organ dysfunction syndrome?

[Total 18 Marks]

SECTION B

Question 2

Although laissez-faire economics are advanced by most capitalist nations, it is argued that lack of regulation is the very thing that brought about the Great Depression and arguably the Global Financial Crisis. Evaluate the preceding proposition, in light of the dominant economic models.

[14 Marks]

Question 3

The Southern African region recently had an outbreak of the dreaded (fictional) disease called bumbularitis. It is a fatal disease that kills its victims within 5 days of contracting it. A cure was invented by in Nigeria by Dr. Kanmi Olarewaju, who has since patented it.

- a) South Africa wishes to reproduce the cure without Dr. Olarewaju's consent, for domestic consumption.
- b) South Africa also wishes to export the cure to other nations in the region that do not have the capacity to produce them.

Advise.

[14 Marks]

Question 4

With the aid of a diagram, describe and evaluate the buffer stock scheme.

[14 Marks]

Question 5

Aint-Finna-Go Ltd (AFG) is a Jamaican manufacturer of sugar. The typical price of sugar in Jamaica is equivalent to K4 per 200g bag. AFG decides to start exporting large quantities of their sugar to the Republic of Zambia. On the Zambian market, their sugar sells for only K1 per 200g bag, which is significantly less than most Zambian sugar which sells for a range of (hypothetically) K10 to K15 per 200g bag.

As a result fewer and fewer people are consuming Zambian produced sugar, which poses a threat to the Zambian sugar industry. The government of Zambia wishes to restrict the quantities of sugar that AFG Ltd can export to Zambia.

Advise

[14 Marks]

Question 6

- a) The government of Nigeria impose a hefty 50% customs duty on all beef coming in from the (fictional) Kingdom of Ubututu, whilst only imposing a customs duty of 10% on all beef coming from the countries of Chichiland and Lalaland. All three countries are members of the WTO. Advise.
- b) Would your answer be any different, if the Kingdom of Ubututu was using all oil proceeds to fund Boko Haram and other terrorist groups?
- c) Would your answer be different, if Nigeria, Chichiland and Lalaland actually belonged to the same Customs Union?

[14 Marks]

Question 7

Explain in detail the procedures that must be followed to bring an action before the World Trade Organization?

[14 Marks]

END OF EXAMINATION



THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

DISABILITY LAW – LPU 4135 MID YEAR EXAMINATION

4TH MARCH 2015

09:00 – 12:00 HOURS

SPORTS HALL

INSTRUCTIONS:

1. Answer **FOUR (4)** questions, one from each Part.
2. Time Allowed: **Three (3) hours plus five (5) minutes** to read through the examination paper.
3. This examination paper carries a total of **60 marks**.
4. Candidates are **permitted to bring the following legal instruments** into the examination room:
 - (i) .The Constitution of the Republic of Zambia, CAP 1 of the Laws of Zambia;
 - (ii) The Persons with Disabilities Act No. 6 of 2012; and
 - (iii) The United Nations Convention on the Rights of Persons with Disabilities.
5. Candidates must **not turn this page** until the invigilator tells them to do so.

PART A

Question 1 (Compulsory)

Lalita is 19 years old and she lives in Chinsali with her mother. Lalita has an intellectual disability and after conducting various tests, her medical doctor advised that her brain has the cognitive capacity of a 10 year old. Lalita also suffers from extreme levels of anxiety. She has now approached her mother and stated that she met a gentleman aged 24 years, whom she has been with for the past 1 year. She says he is an economist and works for a reputable investment firm in Lusaka. Lalita has also told her mother that she is pregnant and that the gentleman, Jacob, has asked for her hand in marriage. Lalita has told her mother that she is happy and wants to start a family with Jacob. Lalita's mother is distraught and has come to you stating that she wants to provide consent for Lalita to abort on grounds that she is aware that in Zambia there is the Termination of Pregnancy Act, CAP 304 of the Laws of Zambia, which provides that:

A person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if he and two other registered medical practitioners, one of whom has specialised in the branch of medicine in which the patient is specifically required to be examined before a conclusion could be reached that the abortion should be recommended, are of the opinion, formed in good faith that the continuance of the pregnancy would involve –

- (i) Risk to the life of the pregnant woman;
- (ii) Risk of injury to the physical or mental health of the pregnant woman;
- (iii) Risk of injury to the physical or mental health of any existing children of the pregnant woman greater than if the pregnancy were terminated; or
- (iv) That there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

Lalita's mother states that she would like to proceed with the abortion on the basis of the above law because Lalita's condition may cause harm to the baby or to Lalita; and that Lalita cannot sustain motherhood. In addition, Lalita's mother states that Lalita cannot get married because she is not in a position to raise a family or start a home due to her cognitive capabilities.

As a Disability Rights Expert, advise Lalita's mother accordingly regarding Lalita's rights in this matter; and advise her on the appropriate approach to adopt.

(18 marks)

PART B

Question 2

With the aid of examples, discuss the principle of non-discrimination on the basis of disability; and provide a critical analysis of the international and domestic normative framework on non-discrimination on the basis of disability.

(14 marks)

Question 3

'Disability is an elusive concept. Historical assumption about, and attitude towards, persons with disabilities have influenced current approaches to disability.' Critically analyse this statement and discuss the advantages and disadvantages of the various approaches to disability, stating which approach best fits in contemporary discourse of challenges faced by persons with disabilities.

(14 marks)

PART C

Question 4

In the case of *Eldridge v British Columbia (Attorney General)* [1997] 3 SCR 624 (para 94), the Supreme Court of Canada held that:

The failure to fund sign language interpretation is not a 'minimal impairment' of the ... rights of deaf persons to equal benefit of the law without discrimination on the basis of their physical disability. The evidence clearly demonstrates that, as a class, deaf persons receive medical services that are inferior to those received by the hearing population. Given the central place of good health in the quality of life of all persons in our society, the provision of sub-standard medical services to the deaf necessarily diminishes the overall quality of their lives. The government has simply not demonstrated that this unpropitious state of affairs must be tolerated in order to achieve the objective of limiting health care expenditures. Stated differently, the government has not made a 'reasonable accommodation' of the appellant's disability.

The above case deals with the notion of 'reasonable accommodation' and the right to health care. Explain the notion of 'reasonable accommodation'; and state whether there are any reasonable limitations that can be placed on the right to political participation of persons with disabilities.

(14 marks)

Question 5

Both individuals and non-governmental organisations may submit complaints to the African Commission alleging violations of the African Charter. The leading case of the Commission dealing with disability rights is the case of *Purohit and Moore v The Gambia*, which was decided in 2003. Give a critical analysis of the significance of the *Purohit* decision; and state whether or not there were any shortcomings in the reasoning of the Commission in reaching its decision.

(14 marks)

PART D

Question 6

The disability rights movement today speaks of 'inclusion' as opposed to mere 'accommodation' of persons with disabilities. With reference to the right to education, compare and contrast the two principles; and state, with substantiation, which principle would be best for Zambia to follow.

(14 marks)

Question 7

The University of Zambia (UNZA) does not have a Policy on Disability Rights. You have been approached by Senate and asked to draft such a Policy because you are a Disability Law Expert. What provisions would you include in UNZA's Policy and why? Substantiate with reference to domestic and international law.

(14 marks)

TOTAL: 60 MARKS

END OF EXAMINATION