



HERBERT CHITEPO LAW SCHOOL
BACHELOR OF LAWS HONOURS DEGREE
LEVEL 1 SEMESTER I
EXAMINATION QUESTION PAPER

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| MODULE CODE | LLB 112 |
| MODULE NARRATION | FOUNDATIONS OF ZIMBABWEAN LAW |
| DATE | 2024 |
| DURATION | 3 HOURS |

INSTRUCTIONS TO CANDIDATES:

- 1. This question paper comprises of 5 pages and it is divided into TWO SECTIONS. These are SECTION A, which is a compulsory question and SECTION B.**
- 2. Answer THREE questions in all. Answer question ONE from SECTION A, which is compulsory, and any other TWO questions from SECTION B.**
- 3. All your answers must be supported by relevant authority.**
- 4. Write legibly.**
- 5. You are allowed to bring clean copies of the Customary Law and Local Courts Act [Chapter 7:05] and The Constitution of Zimbabwe Amendment No.20 of 2013 for use during the examination.**

SECTION A

Question 1 [This question is compulsory]

(a). Hillary Moyo is a first-year student at Herbert Chitepo Law School. The University threw a freshmen party for all its first-year students at the local clubhouse. Hillary does not drink alcohol but only soft drinks. At the party he meets Pamela a neighbour from his hometown in Marondera. Unbeknown to Hillary, Juliet a drug to Hillary's drink in order for him to loosen up and enjoy the freshman party. On his way home at 2 am whilst driving under the influence of alcohol he passes the Chimusana depression at a high speed of 120km whilst the speed limit is 60km/hr and accidentally encroaches on the oncoming traffic lane therefore colliding with Mr Gari on his way to Beitbridge. No one was injured in the accident but when the police reported to the scene they concluded that Hillary was negligent due to his driving under the influence of alcohol.

The policeman seeing how devastated Hillary was, advised him to negotiate with Mr Gari to fix his car and pay the policeman US\$100 for him not to open a docket and take the matter to court. Hillary is afraid this might jeopardize his career in law so he agrees to pay the bribe.

Using the two primary legal schools of thought discuss whether or not Hillary's actions are wrong. **(10 marks)**

(b). Keith is under a lot of stress because of his retrenchment by NMB bank. This has caused him to start smoking and drinking alcohol. His family is mostly upset about this because it leaves him in a bad mood and makes him burst out in anger. Carol his wife says that he will get cancer and it is not ideal to smoke considering that they live in a Muslim community that frowns upon any bad behavior. Martie his friend argues that it is morally wrong to smoke and drink alcohol. One of Keith's friends tells him that smoking is a sin but Keith is convinced it is not because it is not forbidden at his church. One evening, Keith lights a cigarette in the non-smoking section of a city restaurant. When the manager asks him to put out the cigarette, Keith starts to argue with him. Keith argues that he does not think that it is morally wrong to smoke, but the manager replies that he is not interested in Keith's "moral arguments", because smoking in the non-smoking section of the restaurant is in contravention of the law (in this case, one of

the municipal by-laws). Keith is so upset that he storms out without ordering any food. What are the merits of Keith's argument and what are the merits of Carol, Martie and the manager's argument considering the relationship between law, religion and morality.

(10 marks)

(c.)

With specific reference to the Customary Law and Local Courts Act, explain how customary is ascertained in Zimbabwe.

(10 marks)

[Sub Total 30]

SECTION B

Answer any two questions from this section.

Question 2

(a). If positivism is interpreted as requiring that nothing is not law that does not conform to socially accepted criteria, it is inconsistent with positive law. This is because the law purports to be morally in order. Hence it is always possible to argue against a certain interpretation of the law that it is morally indefensible and there is always a certain pressure within a legal system to render it morally defensible. In that way critical morality necessarily becomes a persuasive source of law.

By Tony Honore, (2002), The necessary connection between Law and Morality, Oxford Journal of Legal Studies, Vol. 22, No. 3 (2002), p489

Critically examine the relationship between law and morality with reference to authorities.

(10 marks)

(b). Explain the difference between, transplantation and imposition in the reception of Roman-Dutch Law in South Africa.

(10 marks)

[Sub Total 20]

Question 3

(a). Why was the *Corpus Iuris Civilis* not well received in its time? **(5 marks)**

(b). Briefly discuss how law and religion were intertwined during the Monarchy. **(5 marks)**

(c). Distinguish the difference between things in commerce (*res in commercio*) and things outside commerce (*res extra commercium*). **(5 marks)**

(d). What is the difference between a personal and a real action? **(5 marks)**

[Sub Total 20]

Question 4

(a). How did Ubuntu change the concept of human rights in Africa? **(10 marks)**

(b). Roman Law is the legal system developed by the Roman civilisation over a period of 1300 years from 753 BC to 563CE. Today principles of Roman law are still part of the Zimbabwean legal system. Outline how the legal developments of Roman Law during the Monarchy era, the Roman Republic and the Empire era have influenced our legal system.

(10 marks)

[Sub Total 20]

Question 5

(a). Equality for Men is a non-governmental organisation that was formed in 2018 after the Masvingo High Court and the Masvingo Magistrate Court received several claims of delict of seduction. The Primary objective of the Equality for Men is advocacy for the rights of men. The organisation's agenda for 2022 is to advocate for the abolition of the delict of seduction. They believe that the delict of seduction is outdated and infringes on the right to equality before the law. You are a lawyer with the organisation. You are asked to prepare a comprehensive paper on the law of seduction, covering the customary law of seduction, and the decision in *Katekwe vs Muchabaiwa SC 87/84* Your paper should also state whether or not the delict of seduction infringes the equality clause in the Zimbabwean Constitution (Amendment No. 20)2013.

(10 marks)

(b). (i) With reference to case law identify and describe the requirements for a custom to be recognised as a legal rule. **(5 marks)**

(ii). What is the difference between a legal subject and a legal object? **(5 marks)**

[Sub Total 20]

TOTAL MARKS

[70]

END OF EXAMINATION