



Zambia Institute of Advanced Legal Education

SYLLABUS

FOR

**THE LEGAL PRACTITIONERS' QUALIFYING
EXAMINATION (LPQE) COURSE**

Prepared by:

The Zambia Institute of Advanced Legal Education

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2019

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Vision

“A Centre of excellence in Law Practice Education”.

Through this vision, ZIALE will ensure that it applies innovative strategies to earn international recognition in the provision of practical legal training.

Mission

“To provide quality practical legal training”

Through this mission statement, ZIALE will develop innovative strategies to ensure that the Institute produces competent legal practitioners and non-legal professionals to the satisfaction of all stakeholders.



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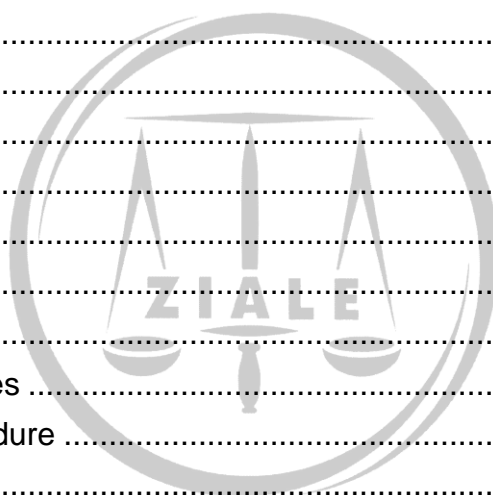
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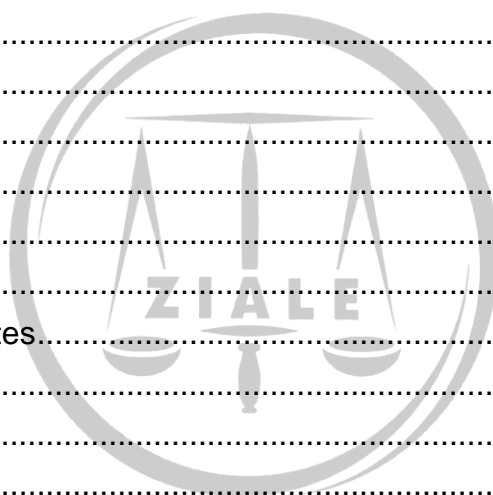
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Preface

The Zambia Institute of Advanced Legal Education (ZIALE) is a statutory body established by *Zambia Institute of Advanced Legal Education Act No. 10 of 1996*, Chapter 49 of the Laws of Zambia, for the main purpose of providing national, regional and international legal post-graduate studies and training in Legislative Drafting as well as other courses (Section 4(1)).

The core function of the Institute is provision of the Legal Practitioners' Qualifying Examination (LPQE) Course to university law graduates wishing to be admitted to the Zambian Bar. In addition to the LPQE Course, the Institute is mandated to offer courses as outlined in the functions of the Council and any other legal related disciplines.

The current LPQE curriculum was developed in 1968 and has never been reviewed since then. However, trends in the legal practice environment have changed over the years and this has necessitated comprehensive review of the LPQE curriculum. The revised LPQE curriculum will equip newly admitted advocates with new trends on the labour market. These advocates will acquire knowledge, skills and values that will enable discharge their duties diligently and compete favourably at international level.

The review of LPQE curriculum is in line with ZIALE's 2019-2021 Strategic Plan. The revised curriculum is a culmination of extensive market research, consultative meetings and interviews as well as the crucial input from various stakeholders which focused on information on the needs of the legal job market in the private, public and not-for-profit sectors of our economy.

The success of the revised curriculum hinges on the quality and effective implementation strategies employed by management and teaching staff. Such strategies may include resource mobilisation and capacity building of the teaching staff.

In conclusion, it's my hope that this curriculum will meet the purpose for which it has been reviewed and I urge the ZIALE Management to regularly review the LPQE Curriculum to ensure that it stays up to date and relevant to the needs and aspirations of the individual and society; and the ever-growing, dynamic and diverse legal job market as well as the nation as a whole.



Linardo Kalaluka SC.
Attorney General
ZIALE COUNCIL CHAIRPERSON

Acknowledgement

The Management of ZIALE wishes to thank TEVETA and the Ministry of General Education through the Directorates Standards and Curriculum and Teacher Education and Specialised Services who provided specialists who guided and facilitated the LPQE Course Syllabus review process.

ZIALE further wishes to thank the Ministry of Justice, Law Association of Zambia, Judiciary of Zambia, Anticorruption Commission, National prosecution Authority, Legal Aid Board, Patent and Company Registration Agency (PACRA), Securities and Exchange Commission, Shamwana and Company, Corpus Legal Practitioners, Women and Law in Southern Africa, Simeza Sangwa and Associates, Stanbic Bank Zambia, University of Lusaka, Zambia Open University, Cavendish University, Livingstone International University of Tourism Excellence and Business Management, which provided Legal Experts who played a key role in content development, consolidation and validation processes.

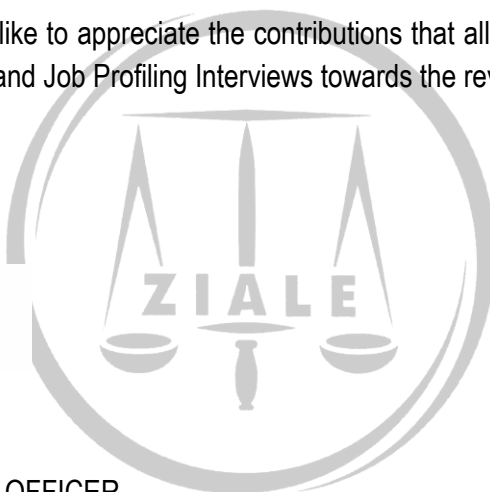
Management would like to further acknowledge the hard work and dedication exhibited by its members of staff, lecturers, assessors and external examiners, not only in the execution of their day to day tasks, but also in the updating and review of the LPQE Course Syllabus 2019.

Lastly but not the least, ZIALE would like to appreciate the contributions that all the organisations and individuals that were involved in the Baseline Survey and Job Profiling Interviews towards the review of the LPQE Curriculum.



Ann Malata-Ononuju (Mrs)

DIRECTOR AND CHIEF EXECUTIVE OFFICER



Acronyms

ZIALE: Zambia Institute of Advanced Legal Education

CDC: Curriculum Development Centre

LPQE: Legal Practitioners' Qualifying Examinations

TEVETA: Technical Education, Vocational and Entrepreneurship Training Authority

LPI: Law Practice Institute

PACRA: Patents and Companies Registration Agency

SEC: Securities and Exchange Commission



Introduction

The revised LPQE curriculum is designed to provide quality delivery of legal education to the post-graduate law students. It is aimed at preparing the learner legal practitioners to approach legal education in a practical rather than academic manner, be selective, precise and efficient in the identification and utilisation of resources as well as learn how to produce error free documents.

In order to implement the LPQE course effectively, lecturers, assessors and examiners should understand the revised LPQE curriculum adequately so that they can facilitate the transfer of necessary legal knowledge, skills, competences and values required for its effective implementation. This therefore means that for the LPQE curriculum to be implemented effectively, it must be used side by side with the modules for the respective Heads.

The LPQE Course comprises the following Heads: Professional Conduct and Ethics, Book Keeping and Accounts, Conveyancing and Legal Drafting, Probate and Succession, Commercial Transaction, Company and Law Procedure, Superior Court Civil Procedure, Subordinate Court Civil Procedure, Domestic Relations, Criminal Procedure, Evidence and Practice, and Legal Process and Research.

Therefore, it is imperative that that learner legal practitioners acquire the required competences through lectures, practical (e.g. Trial Advocacy Sessions), tutorials and attachments.



Entry Requirements

- a) A holder of a degree of law obtained from a public or private university under the University Act, 1999, and whose programme has been accredited by Council of the Zambia Institute of Advanced Education (ZIALE)
- b) A holder of a degree of law obtained at a University outside Zambia in a country operating the Common Law System approved by the Council of ZIALE and whose degree in law is recognised by a university accredited under the ZIALE Act as an academically equivalent to a degree of that accredited university.

Teaching Strategies

In order to help the learner legal, acquire the above stated skills, the following are some of the suggested Teaching Strategies and Techniques that can be used:

Demonstration, Direct instruction, Independent study, Project work, Enquiry/ exploration, Observation, Excursions, Field work, Research, Practicum, Portfolio, Group work, Tutorials, Trial Advocacy Sessions.

Duration of the Programme:

The duration of the programme is 1 year 6 Months. This period includes the six months Learner Legal practitioners' attachment.

Assessment

Learner Legal Practitioners shall be subjected to mid-year examinations and end of Course final examinations set by ZIALE. The aggregated final examination mark is 100% per Head. Whereas the Learner Legal Practitioners repeaters will be subjected to the repeaters examination totalling 100% per Head.

Mid-Year Examinations	25%
Final Examination	75%
Pass Mark	50%
Repeaters Examination	100%

Certification

The Certificate of Completion for the Legal Practitioners' Qualifying Examination (LPQE) Course will be awarded by the Zambia Institute of Advanced Education (ZIALE) to successful candidates upon completion of the course.

Head 1. Professional Conduct and Ethics

Head Code:

Head Duration: 62.5 Hours

Head Description

This course is about legal ethics and professional responsibility of legal practitioners. It is also about professional conduct expected of all legal practitioners. The Law Association of Zambia has developed rules in addition to the conventional ones which act as a barometer of measuring competencies and or suitability of its members for continuing to practice law in Zambia. Therefore, through this course, students will be taught what is expected of all legal Practitioners both in their practice and general behaviour.

Rationale

There is need to equip learner legal practitioners with knowledge and skills that will help them to act professionally. Ethics are crucial in the legal profession in ensuring the credibility of legal practitioners and the legal system as a whole.

Aim

To familiarise learner legal practitioners with the legal code of conduct and duties of a legal practitioner.

General Outcome

Develop an understanding of the duties, and obligations of the legal profession.

Specific Outcomes:

The legal learner should:

- a) Describe the history of the legal profession
- b) Analyse the relevant legislation, regulations, rules of professional conduct and common/case law and general principles of ethics and professionalism applicable to the practice of law in Zambia
- c) Describe the fiduciary nature of lawyer-client relationship
- d) Discuss the importance of professionalism (including civility and integrity in dealing with clients, fellow counsel, the courts and members of the public)
- e) Justify the value of serving and promoting the public interest in the administration of justice.
- f) Discuss the lawyer's role in Alternative Dispute Resolution (ADR) mechanisms.
- g) Analyse how to prepare cases for court
- h) Adhere to the code of conduct of the legal practitioner
- i) Explain the work of an in-house Counsel
- j) Analyse the Judicial Code of Conduct

Key Competencies

- a) Understanding the:
 - i) Law and its Practice;
 - ii) Lawyer and Alternative Dispute Resolution Mechanisms
 - iii) Relationships with the court, profession and the Community
 - iv) mistakes and misapprehensions
 - v) institutions for regulating the Legal Profession
- b) Managing Lawyer-client relationship
- c) Managing relationship with other practitioners
- d) Making informed and reasoned decisions about ethical issues in Law practice



Head Content

1.1 Introduction to the Legal Profession

- 1.1.1 Evolution of the Legal Profession.
- 1.1.2 Characteristics of a Profession.
- 1.1.3 What is Law Practice?
- 1.1.4 Regulation of Law Practice in Zambia.
- 1.1.5 The Law Association of Zambia.
- 1.1.6 Precedence at the Bar.
- 1.1.7 Council of The Law Association of Zambia.
- 1.1.8 Legal Practitioners Committee.
- 1.1.9 Disciplinary Committee.

1.2 The Lawyer-Client Relationship

- 1.2.1 Who is the client?
- 1.2.2 First interview with the client.
- 1.2.3 Maintaining contact with the client.
- 1.2.4 Nature of a retainer and when it can be terminated.
- 1.2.5 Adhering to instructions - Letter of demand
- 1.2.6 Overriding ethical obligations.
- 1.2.7 Independence from client.
- 1.2.8 Confidentiality.
- 1.2.9 What do you do when client tells you he/she is guilty?
- 1.2.10 Legal Professional Privilege.
- 1.2.11 Conflict of interest.
- 1.2.12 Precautions against negligence.
- 1.2.13 Costs.
- 1.2.14 Attorney's lien
- 1.2.15 Sexual relationship with the client.
- 1.2.16 Summary of lawyer's duties to client.

1.3 Relationship with Other Practitioners

- 1.3.1 Duty to fellow practitioners.
- 1.3.2 Communication with another practitioner's client or witness.
- 1.3.3 Duty to attempt excuria settlements on trite law

1.4 The Lawyer and Alternative Dispute Resolution Mechanisms

- 1.3.1 Conducting negotiations.
- 1.3.2 Alternative Dispute Resolution Procedures.
- 1.3.3 Role of Counsel in Alternative Dispute Resolution.

1.4 Relationship with the Court

- 1.4.1 Conduct in Court.
- 1.4.2 Relationship with Judges and Magistrates.
- 1.4.3 Contempt of Court.
- 1.4.4 Conducting a case.
- 1.4.5 Court etiquette
- 1.4.6 Summary of Counsels duties to the Court

- 1.4.7 Fidelity to the Law
- 1.5 Relationship with the Profession and the Community**
 - 1.5.1 Duty to Profession and Community.
 - 1.5.2 Assisting the Disadvantaged (Pro bono)
 - 1.5.3 Types of unprofessional conduct.
- 1.6 Mistakes and Misapprehensions**
 - 1.6.1 Learning from mistakes.
 - 1.6.2 General mistakes and misapprehensions.
 - 1.6.3 Common mistakes in property matters.
 - 1.6.4 Common mistakes in litigation matters.
 - 1.6.5 Common mistakes in commercial matters.
 - 1.6.6 A Summary of Ethical Scenarios in the legal profession: inflated experience at the Bar, Creative Bills, Client's request, Missing Data, Unethical conduct of fellow Counsel, Predicting legal outcome of Client's case, Questionable Gifts from client, Altered court files, Handling Pressure from the Bench etc
- 1.7 Practice Management**
 - 1.7.1 Importance of Practice Management.
 - 1.7.2 Prioritising.
 - 1.7.3 File Management.
 - 1.7.4 Legal Research.
 - 1.7.5 Advertising.
 - 1.7.6 The Ethical Side of Lawyer's
- 1.8 Working in The Law**
 - 1.8.1 Career options.
 - 1.8.2 Working as Advocate in Private Practice.
 - 1.8.3 Working as In-House Corporate Counsel.
 - 1.8.4 Working as an In-House Government Lawyer. –Role of a Prosecutor etc
 - 1.8.5 (clarify if this should be taught in a legal practice course)Working on the Bench.
 - 1.8.6 (Highlight what will be taught) (Highlight what will be taught)
 - 1.8.7 Mental Health, Substance Abuse and Realities of Modern Practice.
 - 1.8.8 Issues in law practice: morality and the law, law and religion, computerised billing, lawyers and foreign legal services-ethical issues
- 1.9 Institutions for Regulating the Legal Profession in Zambia.**
 - 1.9.1 Judicial Complaints Commission:
 - 1.9.2 Jurisdiction,
 - 1.9.3 procedure,
 - 1.9.4 representation
 - 1.9.5 Powers
 - 1.9.6 (Tribunals no longer valid, Please Justify if we may still need to include the topic). Instead we have Judicial Service Commission The Legal Practitioners Committee
 - 1.9.6.1 Procedure
 - 1.9.6.2 Representation
 - 1.9.6.3 Powers
 - 1.9.7 The Disciplinary Committee
 - 1.9.7.1 Procedure,

1.9.7.2 Representation and

1.9.7.3 Powers of DC

1.9.7.4 Striking off the Roll, Restoration and the current Judicial stance

1.10 Leaving the Law

1.10.1 Succession Planning.

1.10.2 Time to Quit.

1.10.3 What next after leaving the law.



Recommended Texts and Statutes

Boulton - Conduct and Etiquette at the Bar.

Lund - Guide to Professional Conduct and Ethics.

Lewis and Kyrou's - Handy Hints on Legal Practice.

Statutes

Legal Practitioners Act, Cap 30.

Law Association of Zambia Act, Cap 31.

The Law Association of Zambia (General) Rules, 1996.

The Legal Practitioners Practice Rules 2002 (S.I. No. 51 of 2002).

The Legal Practitioners (Publicity) Rules 2017 (S.I. No. 23 of 2017).



Head 2. Bookkeeping and Accounts Head

Head Code:

Head Duration: 62.5 Hours

Head Description

This head is designed to enable the learner legal practitioners to prepare and interpret basic financial statements.

Rationale

There is need to equip learner legal practitioners with basic knowledge and skills that will help them to manage their financial matters.

Aim

To provide Learner Legal Practitioners with knowledge and skills in book keeping and accounts necessary for legal practitioners

General Outcome

Develop an understanding of book keeping and accounts relevant to the legal profession.

Specific Outcomes

Learner Legal practitioners should:

- a) Acquire the skill of preparing basic books of accounts
- b) Apply the principle of Double Entry
- c) Analyse the different types of Final accounts for a sole trader and a partnership
- d) Comply with the requirements of the existing tax regime
- e) Distinguish between a client account and an office account

Key Competencies and Skills

- a) Maintaining a proper record of books of accounts
- b) Applying principals of accounting correctly
- c) Applying double entry system for assets, liabilities and capital
- d) Balancing of accounts
- e) Making financial statements of the sole traders and partnerships
- f) Making bank reconciliation statements
- g) Making adjustments for financial statements
- h) Managing the Legal practitioner's Accounts
- i) Applying various taxes and other obligations

Head Content

2.1 Introduction to Principles of Accounting

- 2.1.1 Introduction to accounting principles
- 2.1.2 The accounting system
- 2.1.3 The accounting equation and statement of financial position
- 2.1.4 The double entry system for assets, liabilities and capital
- 2.1.5 The double entry system for inventory
- 2.1.6 The double entry system for expenses and revenues
- 2.1.7 Balancing off accounts
- 2.1.8 The trial balance
- 2.1.9 capital and revenue expenditures

2.2 Books of Original Entry

- 2.2.1 Business documentation
- 2.2.2 Division of the ledger: sales day book and Sales ledger, Purchases day book and Purchases ledger, Sales returns day book and Purchases returns day book
- 2.2.3 Sales tax
- 2.2.4 Cash books
- 2.2.5 Petty cash and imprest system
- 2.2.6 Bank reconciliation statements
- 2.2.7 Journals

2.3 The Financial Statements of Sole Traders and Partnerships

- 2.3.1 Introduction to statements of profit or loss
- 2.3.2 Statements of financial position
- 2.3.3 Vertical presentation of financial statements
- 2.3.4 Accounting concepts

2.4 Adjustments for Financial Statements

- 2.4.1 Depreciation of non-current assets
- 2.4.2 Double entry to record for depreciation, additions and disposal of assets
- 2.4.3 Double entry for bad debts and allowances for doubtful debts
- 2.4.4 Accruals, prepayments and other adjustments for financial statements
- 2.4.5 Errors not affecting trial balance agreement

2.5 Legal Practitioner's Accounts

- 2.5.1 The books of accounts
- 2.5.2 Cash Books
- 2.5.3 Ledgers
- 2.5.4 Bills Delivered Book
- 2.5.5 Receipt Book
- 2.5.6 Petty Cash Book

2.6 Billing Clients

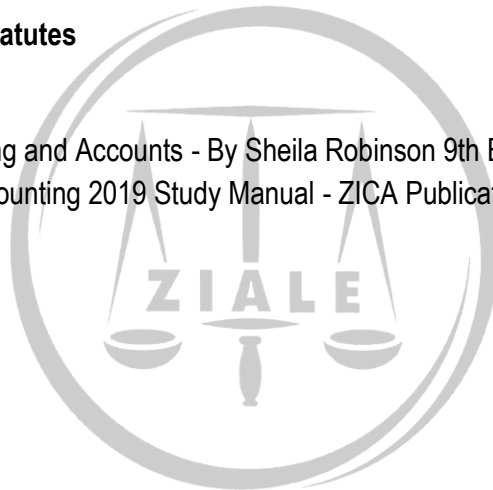
- 2.6.1 The stages in billing
- 2.6.2 The scale rates to be used in billing
- 2.6.3 Reports produced by a billing system
- 2.6.4 How to interpret information in a billing report

2.7 Types of Taxes and Other Statutory Obligations.

- 2.7.1 PAYE
- 2.7.2 Withholding Tax
- 2.7.3 Sales Tax
- 2.7.4 Income Tax
- 2.7.5 NAPSA
- 2.7.6 Other relevant taxes

Recommended Texts and Statutes

1. Frank Wood's Bookkeeping and Accounts - By Sheila Robinson 9th Edition
2. Paper DA 1 Financial Accounting 2019 Study Manual - ZICA Publication



Head 3. Conveyancing and Legal Drafting

Head Code:

Head Duration: 62.5 Hours

Head Description

This head is designed to enable the learner legal practitioners to execute conveyancing instructions and draft relevant conveyance documents

Rationale

To ensure that learner legal practitioners are equipped with skills to execute conveyancing instructions and draft relevant conveyance documents.

Aim

To train learner legal practitioners in executing conveyance instructions and draft relevant conveyancing instructions.

General Outcome

Develop an understanding of conveyancing and drafting of conveyancing documents.

Specific Outcomes

Learner legal Practitioners should:

1. Analyse conveyance law, legal drafting and procedure
2. Explain the importance of Taking Instructions
3. Analyse the different types of Deeds
4. Analyse the different types of leases and leaseholds
5. Identify the specific nature of conveyancing instructions from the client
6. Identify legal issues and procedures involved/documents required in executing conveyancing instructions

Key Competencies

- a) Performing Conveyancing and Legal Writing
- b) Understanding the leasehold tenure system in Zambia
- c) Drafting deeds, leases, trusts, covenants, easements, mortgages and lodgements
- d) Understanding filing procedures at the Ministry of Lands, Local authorities, ZRA and Company registry

Head Content

3.1 Introduction to Conveyancing and Legal Drafting

- 3.1.1 Conveyancing Law
- 3.1.2 Legal Drafting (specific to Conveyancing)

3.2 Land tenure system

- 3.2.1 Leasehold Tenure
 - 3.2.1.1 Leasehold administered by Ministry of Lands
 - 3.2.1.2 Leasehold administered by local authorities
 - 3.2.1.2.1 Statutory housing areas
 - 3.2.1.2.2 Statutory Improvement areas
 - 3.2.1.2.3 Land record card areas
 - 3.2.1.3 Leasehold under resettlement schemes
- 3.2.2 Customary Tenure
 - 3.2.2.1 Acquisition procedure
 - 3.2.2.2 Maintaining customary tenure
 - 3.2.2.3 Conversion to leasehold

3.3 Drafting and Conveyancing Procedure

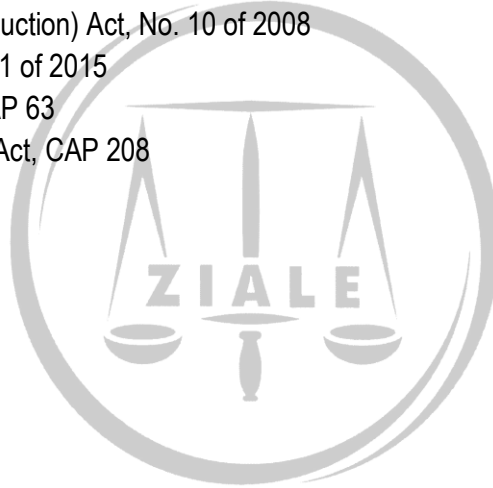
- 3.3.1 Taking instructions
- 3.3.2 The Contract
 - 3.3.2.1 Matters prior to contract
 - 3.3.2.1.1 Searches and Investigation of Title
 - 3.3.2.2 Drafting the Contract
 - 3.3.2.3 Position after contract
 - 3.3.2.3.1 Registration of a Caveat
 - 3.3.2.3.2 Consent to assign
 - 3.3.2.3.3 Property Transfer Tax
 - 3.3.2.3.4 Sub-division and marking off
 - 3.3.2.3.4.1 Land Survey Act
 - 3.3.2.3.4.2 Common Leasehold Schemes Act
 - 3.3.2.3.5 Drafting and Registration of Assignment
- 3.3.3 **Completion/Notice to complete**
- 3.3.4 **Post – Completion Procedure**
 - 3.3.4.1 Reporting to Client
 - 3.3.4.1.1 Types of documents to be retained/handed over to the other party
 - 3.3.4.2 Drawing Bills of Costs.
- 3.3.5 **Deeds – Drafting, Lodgement (Lodgement Schedule) & registration procedure**
 - 3.3.5.1 Assignment
 - 3.3.5.1.1 Mortgage
 - 3.3.5.1.1.1 Movable Property Security Act
 - 3.3.5.1.2 Personal Representative
 - 3.3.5.1.3 Mortgagee
 - 3.3.5.1.4 Liquidators
 - 3.3.5.1.5 Receivers

- 3.3.5.2 Transfer
- 3.3.5.3 Gift
- 3.3.5.4 Moiety
- 3.3.5.5 Assent
- 3.3.5.6 Partition
- 3.3.5.7 Severance
- 3.3.5.8 Exchange
- 3.3.5.9 Deed of postponement and adjustment of priorities
- 3.3.5.10 Rectification
- 3.3.5.11 Surrender
- 3.3.5.12 Substitution of diagrams
- 3.3.5.13 Release
- 3.3.5.14 Vesting Separate titles
 - 3.3.5.14.1 Under the Land Survey Act
 - 3.3.5.14.2 Under the Common Leasehold schemes Act
- 3.3.5.15 Other Deeds
- 3.3.6 Application for lost documents
 - 3.3.6.1 Description of a property under a lease
 - 3.3.6.1.1 Consideration Clause
 - 3.3.6.1.2 Demise Clause
 - 3.3.6.1.3 Habendum Clause
 - 3.3.6.1.4 Reddendum Clauses
 - 3.3.6.2 Renewal of a lease
 - 3.3.6.3 Surrender of a lease
 - 3.3.6.4 Expiration of a lease
- 3.4 Filing Procedure at Ministry of Lands, Local Authorities, ZRA and Companies Registry**
- 3.5 Mortgages – Drafting, Lodgement (Lodgement Schedule) & registration procedure**
 - 3.5.1 Types of mortgages
 - 3.5.1.1 Mortgage
 - 3.5.1.2 Further charge
 - 3.5.1.3 Second mortgage
 - 3.5.1.4 Third party mortgage
 - 3.5.2 Discharge of Mortgages/memorandum of satisfaction
 - 3.5.3 Partial Discharges
 - 3.5.4 Other Securities:
 - 3.5.4.1 Debenture
 - 3.5.4.2 Floating/fixed charge
 - 3.5.4.3 Agricultural charges
- 3.6 Leases – Drafting, Lodgement (Lodgement Schedule) & registration procedure**
- 3.7 Covenants and Easements – Drafting, Lodgement (Lodgement Schedule) & registration procedure**
 - 3.7.1 Mining
 - 3.7.2 Oil and gas exploration
 - 3.7.3 Water extraction and borehole registration

3.7.4 Forests, Game Management Areas and other protected areas
3.8 Trusts – Drafting, Lodgement (Lodgement Schedule) & registration procedure

Recommended Texts and Statutes

Law Association's General Conditions of Sale 2018
Lands Act CAP 184
Land and Deeds Registry Act, CAP 185,
Lands Acquisition Act, CAP 189
Rent Act, CAP 193
Legal Practitioner's Act, CAP 30
Property Transfer Tax Act, CAP 340
Petroleum (Exploration + Production) Act, No. 10 of 2008
Mines and Minerals Act, No. 11 of 2015
The Trusts Restriction Act, CAP 63
Land (Perpetual Succession) Act, CAP 208



Head 4. Probate and Succession

Head Code:

Head Duration: 62.5 Hours

Head Description

This head is designed to enable the learner legal practitioners to exhibit an understanding of the law and procedure that guide Probate and Succession.

Rationale

Clients need guidance on issues of probate and succession. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle Probate and Succession matters.

Aim

To train learner legal practitioners in Probate and Succession.

General Outcome

Develop an understanding of Probate and Succession.

Specific Outcomes

- a) Understand the difference between testate and intestate law of succession
- b) Exhibit knowledge of the types and ownership of property
- c) Demonstrate knowledge of the Probate process draft probate documents.
- d) Demonstrate knowledge in drafting and execution of Wills and administration of estates
- e) Demonstrate basic knowledge of the format of the Will and the requirements
- f) Demonstrate knowledge of the steps in the administration of an estate Describe how to commence proceedings in contentious issues
- g) Exhibit basic knowledge in the drafting of a distribution account Demonstrate ability to administer and distribute estates both testate and intestate.
- h) Exhibit an understanding of the Intestate Succession act and the Wills and administration of Testate Act
- i) Exhibit knowledge of the role of the Administrator General

Key Competencies

- a) Understanding the roles, powers and duties of a Personal representative
- b) Making grants of representation
- c) Making special and limited grants
- d) Drafting opposition to a grant of probate

- e) Drafting probate documents
- f) Understanding devises and bequests
- g) Interpreting and applying the rules of Intestate Succession
- h) Understanding the offences under the Intestate Succession Act and the Penal Code
- i) Understanding roles and functions of the Administrator General



Head Content

4.1 Introduction to Probate and Succession

- 4.1.1 Probate or Testamentary Succession
- 4.1.2 Intestacy or Intestate Succession

4.2 Personal Representative

- 4.2.1 Executor / Executrix
- 4.2.2 Administrator /Administratrix
- 4.2.3 Powers of personal representatives
- 4.2.4 Duties of a personal representatives
 - 4.2.4.1 Possession and control over assets/Registration of Grants
 - 4.2.4.2 Collection of loans and Payment of debts
 - 4.2.4.3 Distribution of assets and residue
 - 4.2.4.4 Ownership of property
 - 4.2.4.5 Protection of beneficiaries
 - 4.2.4.6 Liability of personal representatives
 - 4.2.4.6.1 Assets in the hands of the Personal Representatives (PR)
 - 4.2.4.6.2 Devastavit
 - 4.2.4.6.3 Assets not in the hands of the PR
 - 4.2.4.6.4 Debts owed by the PR
 - 4.2.4.6.5 Wilful default

4.3 Grants of Representation

- 4.3.1 Grant of probate
- 4.3.2 Letters of administration
- 4.3.3 Letters of administration with a Will annexed
- 4.3.4 Intermeddling (Administration De –Son Tort)

4.4 Special and Limited Grants

- 4.4.1 Ad colligenda bona grant
- 4.4.2 Grant de Bonis non administratis
- 4.4.3 Pendente lite grant
- 4.4.4 Grant Caeterorum
- 4.4.5 Grant save and accept
- 4.4.6 Grant till a Will be found
- 4.4.7 Grant to Attorney
- 4.4.8 Grant durante absentia
- 4.4.9 Grant durante minore aetate
- 4.4.10 Cessate Grant
- 4.4.11 Double probate
- 4.4.12 Grant ad litem

4.5 Re-sealing of foreign grants.

4.6 Opposition to a grant of Probate

- 4.6.1 Caveats
- 4.6.2 Citation
- 4.6.3 Renunciation.

4.7 Property

- 4.7.1 Meaning of Property –
- 4.7.2 Ownership of property
 - 4.7.2.1 Joint tenancy
 - 4.7.2.2 Tenancy in common

4.8 Drafting Probate Documents

- 4.8.1 Caveats
- 4.8.2 Administrator's /Executor's Oath
- 4.8.3 Administrator's Bond
- 4.8.4 Inventory
- 4.8.5 Citation

4.9 Wills/Probate or Testamentary Succession

- 4.9.1 Law relating to capacity
- 4.9.2 Requisites of a valid Will
- 4.9.3 Construction of a Will
- 4.9.4 Drafting of a Will
- 4.9.5 Incorporation of documents
- 4.9.6 Erasures
 - 4.9.6.1 Alterations
 - 4.9.6.2 Interlineation
- 4.9.7 Execution of the Will
 - 4.9.7.1 Formal and Informal
- 4.9.8 Revocation of a Will
 - 4.9.8.1 By another Will or codicil
 - 4.9.8.2 By a written declaration
 - 4.9.8.3 By destruction
 - 4.9.8.4 By subsequent marriage
- 4.9.9 Conditional Revocation/Dependent Relative Revocation
- 4.9.10 Revival and republication of a Will
 - 4.9.10.1 Revival by re-execution
 - 4.9.10.2 Revival by codicil
 - 4.9.10.3 Republication

4.10 Devises and bequests

- 4.10.1 Classification of bequests/legacies
 - 4.10.1.1 General legacy
 - 4.10.1.2 Specific legacy
 - 4.10.1.3 Demonstrative legacy
 - 4.10.1.4 Failure of legacies
 - 4.10.1.5 Commorientes
 - 4.10.1.6 Ademption
 - 4.10.1.7 Abatement

4.11 Family Provision in a Will.

4.12 Offences under the Wills and Administration of Testate Estates Act

4.13 Rules of Intestate Succession

- 4.13.1 Customary Law
- 4.13.2 Intestate Succession Act
- 4.13.3 Trust for Sale
- 4.13.4 Administration of estates
- 4.13.5 Rights of Beneficiaries
- 4.14 The office of the Administrator General
 - 4.14.1 The role and functions of the Administrator General
 - 4.14.2 Appointment of Administrator General
 - 4.14.3 Cases in which the Administrator General may apply for Probate/letters of Administration
 - 4.14.4 Vesting of property in Administrator General
 - 4.14.5 Revocation of grant to Administrator General
 - 4.14.6 Fees
 - 4.14.7 Unclaimed assets (bona vacantia)
- 4.15 Offences under the Intestate Succession Act
- 4.16 Offences under the Penal Code

Recommended Texts and Statutes

Gibson's Probate R. E. Megary and H. W. R. Wade, Snell's Equity
 Non-contentious Probate Rules 1862 (to some extent 1954 rules)
 High Court for Zambia (Probate Rules)
 Probate (Re-sealing Act CAP 201)
 Administrator-General's Act, CAP 58
 Intestate Act, CAP 59
 Wills Act, CAP 60
 Local Courts Act, CAP 54
 Local Courts (Amendment) Act No. 9 of 1991
 Trusts Restriction Act CAP 63
 The Wills and Administration of Testate Estates Act No. 6 of 1989
 Probate Handbook, Leb Holloway
 The Law of Succession by Parry and Clark
 (and any amendments to the statute)
 The Penal Code, CAP

Head 5. Commercial Transactions

Head Code:

Head Duration: 62.5 Hours

Head Description

This Head Introduces learner legal practitioners to Commercial Transactions.

Rationale

Commercial transactions are important matters in the Zambian society. Clients need guidance on issues of commercial transactions and agreements. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle matters related to commercial transactions and agreements.

Aim

To train learner legal practitioners in advising clients in commercial transactions and agreements and the practice of commercial procedure in the Superior Courts.

General Outcome

To process commercial transactions arising during the life and development of a business and to develop an understanding of commercial agreements and the practice of commercial procedure.

Specific Outcomes

Learner legal practitioners should:

- a) Demonstrate ability to establish business structures and transfer businesses
- b) Demonstrate ability to draft and review documentation to give effect to and facilitate commercial transactions
- c) Ability to advise and prepare documentation relating to the financing of a business
- d) Demonstrate the ability to use security to manage risk in credit transactions.
- e) Demonstrate ability to resolve legal problems related to sale of goods contracts and hire purchase contracts
- f) Resolve problems related to finance leasing
- g) Apply Commercial Court Procedure Order 53 of the High Court Rules
- h) Exhibit ability to apply the laws and practice related to alternative dispute resolution and mediation and in particular, conciliation, court annexed mediation, arbitration and construction industry adjudication.

Key Competencies

- a) Forming and dissolving partnerships
- b) Drafting the power of Attorney
- c) Terminating of Agency
- d) Drafting Hire Purchase and Sale of Goods Agreements
- e) Terminating Hire Purchase agreements
- f) Understanding financial arrangements
- g) Understanding types of mortgages
- h) Negotiating, Drafting and Scrutinising Contracts and Agreements
- i) Resolving disputes between consumers and traders



Head Content

5.1 Partnerships

- 5.1.1 Distinction between partnerships and a limited company
- 5.1.2 Essential elements of partnerships
- 5.1.3 Formation of partnerships
- 5.1.4 Essential clauses in drafting a Partnership Deed
- 5.1.5 Rights and duties partners
- 5.1.6 Dissolution of partnerships

5.2 Agency

- 5.2.1 Power and authority and agent
- 5.2.2 Types of authority of an agent
- 5.2.3 Ratification of agent's action and it's effect
- 5.2.4 Duties of an agent
- 5.2.5 Termination of agency
- 5.2.6 Effect of termination visa-vis third parties
- 5.2.7 Power of Attorney
 - 5.2.7.1 Capacity to create a Power of Attorney
 - 5.2.7.2 Formalities of creating a Power of Attorney
 - 5.2.7.3 Duties and remuneration of an Attorney
 - 5.2.7.4 Attorney's protection and protection of third parties
 - 5.2.7.5 Revocation of Power of Attorney
 - 5.2.7.6 Types of Power of Attorney
 - 5.2.7.7 Checklist for preparing Power of Attorney
 - 5.2.7.8 Drafting the Power of Attorney

5.3 Sale of Goods

- 5.3.1 Distribution Contract
- 5.3.2 Supply Agreements

5.4 Hire – Purchase Law

- 5.4.1 Nature of a Hire-Purchase Contract
- 5.4.2 Formation of Hire-Purchase Agreement
- 5.4.3 Duties and rights of the owner / seller and hirer/buyer
- 5.4.4 Termination of Hire-Purchase Agreement
- 5.4.5 Types of Agreements,
 - 5.4.5.1 Credit Sale
 - 5.4.5.2 Simple Hire Contracts
 - 5.4.5.3 Finance Lease
 - 5.4.5.4 Drafting Agreements

5.5 Financing Arrangements

- 5.5.1 Types of financing arrangements
- 5.5.2 Bonds and Guarantees
- 5.5.3 Sovereign Borrowing and Lending – loan agreement with International Financial Institutions
- 5.5.4 Counter-indemnity
- 5.5.5 Syndicated Loans

- 5.5.6 Bills of Sale
- 5.5.7 Heads of Terms/Letter of Intent
- 5.5.8 Loan Agreement
- 5.5.9 Facility Agreement (Revolving, Committed, Uncommitted, Overdraft, Term Loan, Export Credit)
- 5.6 Capital Markets**
 - 5.6.1 The Stock Exchange
 - 5.6.2 Types of securities
 - 5.6.3 Listing of shares
 - 5.6.4 Issuance of bonds
 - 5.6.5 The LuSE Listing Rules and LuSE Listing Rules for Debt Markets
- 5.7 Creating Security**
 - 5.7.1 Debentures
 - 5.7.1.1 Floating charge
 - 5.7.1.2 Specific/fixed charge
 - 5.7.1.3 Effect of the floating charge
 - 5.7.1.4 Restriction on the floating charge
- 5.8 Mortgages**
 - 5.8.1 Characteristics of a mortgage
 - 5.8.2 Types of mortgage
 - 5.8.2.1 Legal mortgage
 - 5.8.2.1.1 Main provisions of legal mortgage
 - 5.8.2.2 Equitable mortgage
 - 5.8.2.2.1 Creating and equitable mortgage
 - 5.8.2.3 Mortgagor's Equity of Redemption
 - 5.8.2.4 Mortgagees remedies
 - 5.8.2.4.1 Payment of principal and interest
 - 5.8.2.4.2 Possession
 - 5.8.2.4.3 Foreclosure and sale of the mortgaged property
 - 5.8.2.4.4 Appointment of Receiver / Manager
 - 5.8.2.5 Mortgagor's remedies
 - 5.8.2.5.1 Possession
 - 5.8.2.5.2 Redemption
 - 5.8.2.5.3 Surrender or release
 - 5.8.3 Trade Charges
 - 5.8.4 Agriculture Charges
 - 5.8.4.1 Types of Agricultural Charges
 - 5.8.4.2 Effect of a fixed charge
 - 5.8.4.3 Obligations of the farmer/trader under a fixed charge
 - 5.8.4.4 Effect of a floating
 - 5.8.4.5 Notice of agricultural charge
 - 5.8.4.6 Registration of agricultural charges
 - 5.8.4.7 Validity of contracts for advances on inputs and other things
 - 5.8.4.8 Failing to make full disclosure of cost of inputs and other items and interest

- 5.8.5 Security Assignment
- 5.8.6 Pledges
- 5.8.7 Liens
- 5.8.8 Guarantee
 - 5.8.8.1 Nature of Guarantee
 - 5.8.8.2 Essentials of Guarantee
 - 5.8.8.3 Form of Contract of a Guarantee
 - 5.8.8.4 Guarantor's liability
 - 5.8.8.5 Enforcement of Guarantor's liability
 - 5.8.8.6 Guarantor's rights after payment
- 5.8.9 Perfection of Security (Registration at Public Registries)
- 5.9 Mergers and Acquisitions**
 - 5.9.1 How can a business be transferred
 - 5.9.2 Due Diligence
 - 5.9.3 Confidentiality and Non-Disclosure Agreement
 - 5.9.4 Heads of Terms/Letter of Intent
 - 5.9.5 Share Sale and Purchase Agreement
 - 5.9.6 Joint Venture/Shareholders Agreement
 - 5.9.7 Novation Agreements
 - 5.9.8 Law relating to mergers and acquisitions- competition and other regulatory approvals
- 5.10 General Contracts and Agreements**
 - 5.10.1 Negotiating, Drafting and Scrutinising Contracts and Agreements
 - 5.10.2 Terms and Conditions
 - 5.10.3 Memorandum of Understanding
 - 5.10.4 Representation/Agency Agreement
 - 5.10.5 Franchising Agreement
 - 5.10.6 Provision of Services Agreement (Retainership)
 - 5.10.7 Management Agreement
 - 5.10.7.1 Proceedings in the High Court for Zambia
- 5.11 Commercial List Procedure Order 53 of the High Court Rules**
 - 5.11.1 Procedure
 - 5.11.2 Status Conference
 - 5.11.3 Trial
 - 5.11.4 Interlocutory Applications
 - 5.11.5 60 days period
- 5.12 Alternative Dispute Resolution**
 - 5.12.1 Mediation and Arbitration
 - 5.12.1.1 Principles of Mediation
 - 5.12.1.2 Stages and Facets of Mediation
 - 5.12.1.3 Court Annexed Mediation
 - 5.12.1.4 Characteristics of Mediation and Arbitration
 - 5.12.1.5 Mediation Settlements
 - 5.12.1.6 Advantages and disadvantages of Mediation and Arbitration

5.12.1.7 Differences and similarities between Mediation and Arbitration

5.12.1.8 Ethics and Values in Alternative Dispute Resolution

5.12.1.8.1 Fairness

5.12.1.8.2 Conflict of Interest

5.12.1.8.3 Confidentiality

5.12.2 Arbitration and Litigation

5.12.2.1 Advantages of Arbitration over Litigation

5.12.2.2 Matters subject to Arbitration and exceptions

5.12.2.3 Characteristics of an Arbitration Agreement

5.12.2.3.1 Separability Doctrine

5.12.2.4 Arbitration process

5.12.2.5 Role of the Tribunal Chairman

5.12.2.6 Qualities and qualifications of Arbitrators

5.12.2.7 Termination of an Arbitrator's mandate

5.12.2.8 Procedure for challenging an Arbitrator

5.12.2.9 Arbitrator's preliminary meeting

5.12.2.10 Jurisdiction of an arbitrator

5.12.2.10.1 Kompetenz - Kompetenz

5.12.2.11 Arbitral Award

5.12.2.11.1 Recourse against and an Award

5.12.2.11.2 Recognition and Enforcement of an Award

5.12.2.11.3 Application to set aside an Award

5.12.2.11.4 Recognition and Enforcement of Arbitral Award

Recommended Text and Statutes

Lowe – Commercial Law

Underhill – Partnership

Partnership Act, 1890 (UK)

Agriculture Credits Act, 2010

Arbitration Act No. 19 of 2000

Trade Charges Act, CAP 415

Disposal of Uncollected Goods Act, CAP 410

Industrial Relations Act, CAP 269

Hire Purchase Act, CAP 399

Moveable Property (Security Interest) Act, 2016

Sale of Goods Act, 1893

Employment code Act



Head 6. Company Law and Procedure

Head Code:

Head Duration: 62.5 Hours

Head Description

This head introduces learner legal practitioners to Company Law and Procedure

Rationale

Company Law and Procedure are important matters in relation to the economy and business. Clients need guidance on issues relating to Company Law and Procedure. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle matters related to Company Law and Procedure. This course will also benefit candidates who may work as in-house counsel.

Aim

To equip Learner Legal Practitioners to understand both the rationale for setting up a limited liability company and its relevance to business in order to provide informed legal opinions to private clients and to undertake procedures and practicalities related to compliance and governance with respect to the operation of a company and in particular to provide a background for lawyers desirous of practising as in-house counsel.

General Outcome

Develop an in-depth understanding of the role of a company in the business world and how it relates to the protection of the interests of its various stakeholders

Specific Outcomes

- a) Describe the place of the Company in the organisation of business
- b) Demonstrate ability to draft company Documents and to incorporate a company
- c) Demonstrate understanding of the role of PACRA
- d) Exhibit ability to advise clients on pre and post Incorporation procedure
- e) Apply the law relating to financing the operations of a company
- f) Exhibit ability to apply the laws related to membership of a company
- g) Demonstrate ability to apply the law relating to corporate governance
- h) Demonstrate ability to apply the laws related to winding up and liquidation

Key Competencies

- a) **Understanding company formation and dissolution**
- b) **Financing the operation of a company**
- c) **Understanding Capital Markets**

- d) **Governing in corporate entities**
- e) **Understanding the Winding-Up/Liquidation procedures**



Head Content

6.1 Introduction to Company Law Practice

- 6.1.1 Nature of a Company
 - 6.1.1.1 Business entities
- 6.1.2 A Company's objectives
- 6.1.3 Attributes of incorporation
 - 6.1.3.1 Corporate Personality
 - 6.1.3.2 Limited liability
 - 6.1.3.3 Perpetual Succession
 - 6.1.3.4 Members, Shareholders and Directors

6.2 Company Formation

- 6.2.1 Types of companies
 - 6.2.1.1 Public Companies
 - 6.2.1.2 Private Companies
 - 6.2.1.3 Foreign companies
- 6.2.2 Incorporation check list
- 6.2.3 Pre-incorporation procedures
 - 6.2.3.1 Taking instructions, name search, etc
 - 6.2.3.2 Preparation and execution of documents
 - 6.2.3.3 Documents to be lodged on application for incorporation
 - 6.2.3.4 Pre-incorporation contracts
- 6.2.4 Registration:
 - 6.2.4.1 Lodgement of Documents
- 6.2.5 Post Incorporation Procedures:
 - 6.2.5.1 Formalisation of Directors' appointments
 - 6.2.5.2 Specific sector regulated companies
 - 6.2.5.2.1 Public Listed Companies (Securities Act)
 - 6.2.5.2.2 Financial Institutions (Insurance Act, Banking and Financial Services Act)
 - 6.2.5.2.3 Mining Companies (Mines and Minerals Development Act)

6.3 Raising Capital

- 6.3.1 Financing the operation of the Company
 - 6.3.1.1 Methods of raising funds
 - 6.3.1.1.1 Shares and share trading, stock exchange, listing requirements
 - 6.3.1.1.2 Direct offer – prospectus
 - 6.3.1.1.3 Rights issue
 - 6.3.1.1.4 Placing
 - 6.3.1.2 Public issue of shares;
 - 6.3.1.2.1 Filing of prospectus
 - 6.3.1.2.2 Liability and defence arising from Prospectus
 - 6.3.1.3 Loan capital
 - 6.3.1.3.1 Charges and Mortgages

- 6.3.1.3.1.1 Execution; failure to register, priorities
- 6.3.1.3.1.2 Charges – Classification
- 6.3.1.3.1.3 Rights of Chargees
 - 6.3.1.3.1.3.1 Enforcement of charge, appointment of receivers

6.4 Share Capital

- 6.4.1 Share Capital and Shares
 - 6.4.1.1 Classification of Capital
 - 6.4.1.2 Currency
- 6.4.2 Alteration of Share Capital
- 6.4.3 Reduction of Share Capital
- 6.4.4 Shares
 - 6.4.4.1 Liability of members
 - 6.4.4.2 Types of Shares
 - 6.4.4.3 Allotment, Surrender and forfeiture of Shares
- 6.4.5 Membership of a Company
 - 6.4.5.1 Registration of members
 - 6.4.5.2 Annual list of members
 - 6.4.5.3 Rights of members
 - 6.4.5.4 Ceasing to be a member
 - 6.4.5.5 Liabilities
- 6.4.6 Drafting shareholder agreements

6.5 Corporate Governance

- 6.5.1 Introduction to corporate governance and principles
- 6.5.2 Applicable Codes on corporate governance
- 6.5.3 Directors
 - 6.5.3.1 Eligibility
 - 6.5.3.2 Appointment, retirement, dismissal from Office
 - 6.5.3.3 Powers, duties and liabilities
 - 6.5.3.4 Types of Directors
 - 6.5.3.4.1 Alternate
 - 6.5.3.4.2 Shadow
 - 6.5.3.4.3 Executive
 - 6.5.3.4.4 Non-Executive
 - 6.5.3.5 Director's emoluments
- 6.5.4 Company Secretary
 - 6.5.4.1 Eligibility
 - 6.5.4.2 Appointment
 - 6.5.4.3 Duties
- 6.5.5 Meetings
 - 6.5.5.1 Classification of meetings
 - 6.5.5.1.1 Statutory meetings

- 6.5.5.1.2 Annual general meetings
 - 6.5.5.1.3 Extra ordinary meetings
 - 6.5.5.1.4 Class meetings
 - 6.5.5.1.5 Board and Board committee meetings
 - 6.5.5.2 Convening meetings
 - 6.5.5.2.1 Notice
 - 6.5.5.2.2 Agenda
 - 6.5.5.3 Conduct of meetings
 - 6.5.5.3.1 Quorum
 - 6.5.5.3.2 The Chairperson
 - 6.5.5.3.3 Voting rights
 - 6.5.5.3.4 Proxies
 - 6.5.5.4 Drafting Minutes
- 6.5.6 Resolutions
 - 6.5.6.1 Classification
 - 6.5.6.2 Drafting of Resolutions
- 6.5.7 Statutory Records – Audit and Annual Returns
 - 6.5.7.1 Financial Accounts of a company,
 - 6.5.7.2 Auditors and their appointment
 - 6.5.7.3 Director's statement
 - 6.5.7.4 Directors report
 - 6.5.7.5 Statutory books
 - 6.5.7.6 Annual returns
- 6.6 Schemes of Arrangements, Reconstruction and Amalgamation**
 - 6.6.1 Schemes of Arrangements
 - 6.6.1.1 Compromise with
 - 6.6.1.2 Creditors
 - 6.6.1.3 Members
 - 6.6.2 Reconstruction and amalgamation
 - 6.6.3 Protection of minorities
- 6.7 Receivership**
- 6.8 Corporate Rescue-Administration**
- 6.9 Winding-Up/Liquidation**
 - 6.9.1 Modes of winding up
 - 6.9.1.1 By court
 - 6.9.1.2 Voluntary – Creditors/Members
 - 6.9.2 Consequences of putting a company under liquidation
 - 6.9.2.1 Liquidation
 - 6.9.2.2 Appointment of Liquidators
 - 6.9.2.3 Vesting of Company property
 - 6.9.2.4 Statement of Company affairs
 - 6.9.2.5 Declaration of solvency
 - 6.9.2.6 Meeting of Creditors
 - 6.9.2.7 Liquidator's accounts

- 6.9.2.8 Final meeting of a company
- 6.9.2.9 Staying of winding up
- 6.9.3 Defunct Companies
 - 6.9.3.1 Registrar's Powers

Recommended Texts and Statutes

Companies Act No 10 of 2017

The Corporate Insolvency Act No. 9 of 2017

Corporate Insolvency Rules of 2019

Companies Regulation Act

The Moveable Properties (Security interest) Act No.3 of 2016

The Securities Act No. 41 of 2016

The Banking and Financial Services Act No. 7 of 2017

The Insurance Act No 27 of 1997

The Mines and Minerals Development Act No.11 of 2015

LuSE Governance Code

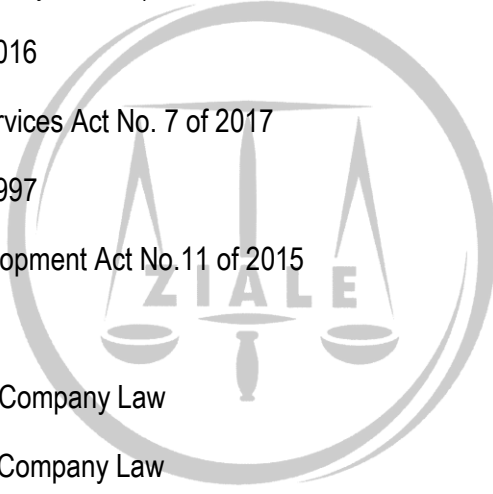
H. R. Hahlo – A case book on Company Law

Gowers: Modern Principles of Company Law

Palmer's Company Precedents

Alan J. Dignam and John Lowry – Company Law

Annual Reports of Listed Companies as examples



Head 7 (I). Superior Courts Civil Procedure

Head Code:

Head Duration: 62.5 Hours

Head Description

This Head Introduces Learner Legal Practitioners to Superior Court Procedures.

Rationale

Clients need guidance on issues on Superior Court Procedures. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle matters related to Superior Court Procedures.

Aim

To train learner legal practitioners in Superior Court Procedures.

General Outcome

Develop an understanding of Superior Court Procedures

Specific Outcomes

- a) Describe modes of beginning proceedings.
- b) Demonstrate ability to serve legal documents within and out of time.
- c) Exhibit ability to advise clients on Parties to proceedings.
- d) Apply the law relating to joinder of causes of action.
- e) Exhibit ability to apply other court proceedings.
- f) Demonstrate ability to prepare for the trial process.
- g) Demonstrate ability to explain the outcome of a court case to clients.
- h) Demonstrate ability to appeal against the ruling of the court.
- i) Demonstrate ability to enforce and execute processes.
- j) Demonstrate ability to draft legal documents.

Key Competencies

Understanding the rules and modes of commencement of proceedings in the various Divisions of the Courts

Head Content

7.1 High Court

- 7.1.1 Practice and Procedure**
 - 7.1.1.1 Understanding the Rules of the Court
- 7.1.2 Taking Instructions**
 - 7.1.2.1 Letter of Demand
- 7.1.3 Modes of commencement of proceedings in the various Divisions of the High Court:**
 - 7.1.3.1 Writ of Summons:**
 - 7.1.3.1.1 Endorsement of Writ
 - 7.1.3.1.2 Duration and Renewal of Writ
 - 7.1.3.1.3 Amendment of Writ.
 - 7.1.3.2 Originating Summons:**
 - 7.1.3.2.1 Contents of Originating Summons
 - 7.1.3.2.2 Amendment of Originating Summons
 - 7.1.3.3 Originating Notice of Motion
 - 7.1.3.4 Petition
 - 7.1.3.5 Company liquidation
 - 7.1.3.6 Proceedings under Part III of the Constitution
 - 7.1.3.7 Notice of Complaint under Industrial Relations Division
- 7.1.4 Service of process**
- 7.1.5 Parties to Proceedings**
 - 7.1.5.1 Non-joinder of Parties
 - 7.1.5.2 Misjoinder of Parties
 - 7.1.5.3 Substitution of Parties
- 7.1.6 Consolidation of causes of action**
- 7.1.7 Appearance and Directions**
- 7.1.8 Summary Judgement Proceedings (Seek Clarification)**
- 7.1.9 Third Party Proceedings**
- 7.1.10 Pleadings**
- 7.1.11 Procedure of Seeking Leave of the court**
 - 7.1.11.1 Viva Voce
 - 7.1.11.2 Consent
 - 7.1.11.3 Formal Application
- 7.1.12 Interlocutory Proceedings**
 - 7.1.12.1 Amendment
 - 7.1.12.2 Discontinuance and withdrawal
 - 7.1.12.3 Payment in and out of Court
 - 7.1.12.4 Security for Costs
 - 7.1.12.5 Discovery and Interrogatories
 - 7.1.12.6 Admissions
 - 7.1.12.7 Further and better particulars
 - 7.1.12.8 Non-attendance of parties
 - 7.1.12.9 Injunction and Interim Attachment

- 7.1.12.10 Default Judgements
- 7.1.12.11 Striking out Pleadings and Actions
- 7.1.12.12 Dismissal for Want of Prosecution
- 7.1.13 Presentation of the Case
 - 7.1.13.1 Bundle of Documents
 - 7.1.13.2 Discovery and inspection
- 7.1.14 Trial Process
 - 7.1.14.1 Setting down actions for Trial
 - 7.1.14.2 Proceedings at trial
- 7.1.15 Drawing up and entering Judgement
- 7.1.16 Appeals
 - 7.1.16.1 Interlocutory Appeals
 - 7.1.16.2 Appeals to the Judge in chambers
- 7.1.17 Administrative Justice-Judicial Review
- 7.1.18 Electronic Filing
- 7.1.19 Order 14A
- 7.1.20 Enforcement and Execution Processes
 - 7.1.20.1 Stay of Execution Processes
 - 7.1.20.2 Stay of Execution pending settlement by instalments, etc
- 7.1.21 Witness Statements
 - 7.1.21.1 Skeleton arguments and list of authorities
 - 7.1.21.2 Submissions
- 7.1.22 List of Authorities
- 7.1.23 Hearing Fees
- 7.1.24 Judgment
- 7.1.25 Enforcement of Judgment
- 7.1.26 Interpleader Application
- 7.1.27 Assessment
- 7.1.28 Taxation of Costs

7.2 Court of Appeal

- 7.2.1 Practice and Procedure
 - 7.2.1.1 Understanding the Rules of the Court
- 7.2.2 Time for filing appeals
- 7.2.3 Leave to appeal
- 7.2.4 Notice of Appeal, Cross Appeal and Memorandum of Appeal
- 7.2.5 Preparing Record of Appeal
- 7.2.6 Preparing Heads of Arguments
- 7.2.7 Default of Appeal
- 7.2.8 Interlocutory Applications and Motions
- 7.2.9 Judgment and enforcement
- 7.2.10 Application for Leave to Appeal to the Supreme Court

7.3 Supreme Court

- 7.3.1 Practice and Procedure
 - 7.3.1.1 Understanding the Rules of the Court
- 7.3.2 Time for filing appeal after leave to appeal is granted
- 7.3.3 Notice of Appeal, Cross Appeal and Memorandum of Appeal
- 7.3.4 Preparation of Record of Appeal
- 7.3.5 Preparing Heads of Arguments
- 7.3.6 Default of Appeal
- 7.3.7 Interlocutory applications and motions
- 7.3.8 Judgment and enforcement

7.4 Constitutional Court

- 7.4.1 Practice and Procedure
 - 7.4.1.1 Understanding the Rules of the Court
- 7.4.2 Petitions
 - 7.4.2.1 Election Petitions
 - 7.4.2.2 Other Petitions
- 7.4.3 Interlocutory Application
- 7.4.4 Judgement

7.5 Alternative Dispute Resolution

- 7.5.1 Arbitration
 - 7.5.1.1 Role of the Lawyer
 - 7.5.1.2 Practice and Procedure
 - 7.5.1.3 Statement of Case
 - 7.5.1.4 Statement of Defence
 - 7.5.1.5 Procedure at the arbitral hearing
 - 7.5.1.6 Registration of Award and Enforcement
 - 7.5.1.7 Setting Aside Award
- 7.5.2 Mediation
 - 7.5.2.1 Role of the Lawyer
 - 7.5.2.2 Court Annexed Mediation
 - 7.5.2.3 Practice and Procedure at Mediation
 - 7.5.2.4 Effect of a Mediation Order
- 7.5.3 Tribunals
 - 7.5.3.1 Role of the Lawyer
 - 7.5.3.2 Practice and procedure in Tribunals

Recommended Texts and Statutes

Supreme Court of Zambia Act, CAP 25

Constitutional Court Act No.8 of 2016

Court of Appeal Act No.7 of 2016

High Court Act, CAP 27

Rules of the Supreme Court of England (White Book, 1999)

Regional Planning Act

Tax Appeals Tribunals

Lands Tribunals

Towns and Country Planning Act

Oggers on pleading and practice

Zambian Civil Procedure: Commentary and Cases Vol. 1 & 2, Hon. Dr. Justice Patrick Matibini, SC

Case Law



Head 7 (II). Subordinate Court Civil Procedure

Head Code:

Head Duration: 62.5 Hours

Head Description

This head is designed to help Learner Legal Practitioners acquire practical civil litigation skills in the subordinate court

Rationale

A lot of civil litigation takes place in the subordinate courts. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle matters related to Subordinate Court Civil Procedure

Aim

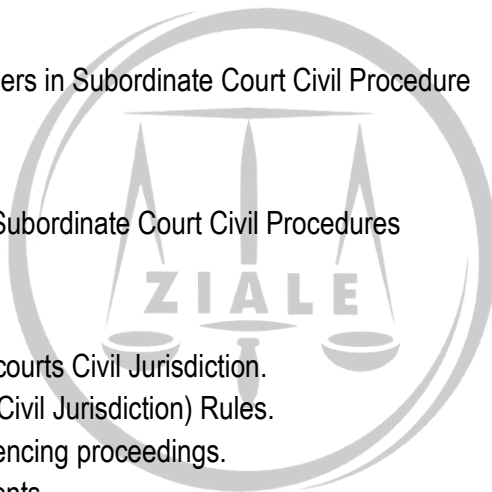
To train learner legal practitioners in Subordinate Court Civil Procedure

General Outcome

Develop an understanding of Subordinate Court Civil Procedures

Specific Outcomes

- a) Describe the subordinate courts Civil Jurisdiction.
- b) Apply Subordinate Court (Civil Jurisdiction) Rules.
- c) Describe modes of commencing proceedings.
- d) Exhibit ability to advise clients.
- e) Draw pleadings
- f) Conduct trials.
- g) Make interlocutory applications.
- h) Conduct assessment of damages.
- i) Prepare bills of costs and handle taxation.
- j) Enforce judgements and orders.
- k) Appeal against decisions of the court.



Key Competencies

- a) Demonstrate knowledge of the Constitution of Subordinate Courts
- b) Commencing suits and trials in the Subordinate Courts
- c) Applying interlocutory procedures
- d) Drawing pleadings
- e) Making Appeals from Local Courts to Higher level Courts
- f) Executing judgements



Head Content

8.1 Introduction to Subordinate Court (Civil Jurisdiction) Rules

8.2 Constitution of Subordinate Courts

8.2.1 Subordinate Court of the First Class

8.2.1.1 Chief Resident Magistrate

8.2.1.2 Principal Resident Magistrate

8.2.1.3 Senior Resident Magistrate

8.2.1.4 Resident Magistrate

8.2.1.5 Magistrate of the First Class

8.2.2 Subordinate Court of the Second Class

8.2.2.1 Magistrates of the Second Class

8.2.3 Subordinate Court of the Third Class

8.2.3.1 Magistrates of the Third Class

8.3 Appointment/ Jurisdiction of Magistrates

8.3.1 Appointment of Magistrates

8.3.2 Territorial jurisdiction

8.3.3 Jurisdiction/Powers of Magistrates in civil matters

8.3.4 Extension of Jurisdiction of Magistrates

8.4 Commencement of Suits in The Subordinate Courts

8.4.1 Instructions to Counsel

8.4.2 Writ of Summons

8.4.3 Default Writ of Summons

8.4.4 Originating Summons

8.4.5 Originating Notice of Motion

8.4.6 Petition

8.4.7 Discontinuance of Suits

8.5 Parties to Actions

8.5.1 Representative Actions

8.5.2 Actions by minors and persons of unsound minds

8.5.3 Actions by and against Government

8.5.4 Actions by and against partnerships or firms

8.5.5 Actions by and against limited liability companies

8.6 Service of Court Process

8.6.1 Service on individuals

8.6.2 Service on Partnerships

8.6.3 Service on Limited liability Companies

8.6.4 Service on prisoners or persons in asylum

8.6.5 Service on Government employees

8.6.6 Service out of Zambia

8.6.7 Substituted Service

8.7 Interlocutory Procedures

- 8.7.1 Ex-parte Summons for leave to serve Court Process by substituted service
- 8.7.2 Ex-parte Summons for leave to serve Court process out of Zambia
- 8.7.3 Summons for leave to amend writ/proceedings
- 8.7.4 Summons for an Order to join Party to proceedings
- 8.7.5 Summons for an Order to strike out Party from proceedings for misjoinder
- 8.7.6 Summons for an Order to alter Party to proceedings
- 8.7.7 Third Party Proceedings
- 8.7.8 Summons for an Order for the Arrest of Absconding Defendant
- 8.7.9 Summons for an Order for Interim Attachment of Property pending Judgment
- 8.7.10 Ex-parte Summons for an Order for Interim Injunction
- 8.7.11 Summons for an Order for an Interlocutory Injunction
- 8.7.12 Summons for Order to restore matter to active cause List
- 8.7.13 Summons to dismiss matter for want of jurisdiction
- 8.8 **Drawing of Pleadings**
 - 8.8.1 Statement of Claim
 - 8.8.2 Defence
- 8.9 **Default Procedure**
 - 8.9.1 Judgment in Default of Defence
 - 8.9.2 Summons to set aside Judgment in default of defence
- 8.10 **Trials in the Subordinate Courts**
 - 8.10.1 Order of proceedings at Trial
 - 8.10.2 Burden of Proof
 - 8.10.3 Standard of Proof
 - 8.10.4 Documentary Evidence
 - 8.10.5 Transfer of cases
 - 8.10.6 Completion of proceedings
- 8.11 **Applications under the Gender Based Violence Act**
- 8.12 **Money Lenders application**
- 8.13 **Assessment of Damages**
 - 8.13.1 Summons for Assessment of Damages
- 8.14 **Review**
 - 8.14.1 Jurisdiction to review
 - 8.14.2 Summons for an Order to review Judgment/Ruling
- 8.15 **Appeals from The Local Court to The Subordinate Court**
- 8.16 **Appeals from Subordinate Court to High Court**
 - 8.16.1 Appeals against final Judgment
 - 8.16.2 Appeals against Rulings/decisions made in Chambers
 - 8.16.3 Appeals against Ex-parte Consent Orders
 - 8.16.4 Ex-parte Summons for extension of time within which to file Notice of Intention to Appeal
 - 8.16.5 Summons for an Order for Security for Costs

8.17 Enforcement/Execution of Judgments

8.17.1 Writ of Fieri Facias

8.17.2 Garnishee Proceedings

8.17.3 Interpleader Summons

8.17.4 Writ of Elegit

8.17.5 Writ of Possession

8.17.6 Writ of delivery

8.17.7 Summons for leave to liquidate Judgment Debt in monthly instalments

8.17.8 Ex-parte Summons for an Order to stay execution of writ of Fieri Facias pending determination of Summons for leave to liquidate Judgment Debt in monthly instalments

8.17.9 Summons to set aside Writ of Feiri Facias for irregularity

8.17.10 Summons to set aside Writ of Possession for irregularity

8.18 Costs

8.18.1 Scales

8.18.2 Party and Party

8.18.3 Advocate and Client

8.18.4 Drawing a Bill

8.18.5 Taxation and Costs

8.19 Briefs

Recommended Texts and Statutes

Subordinate Courts Act, CAP 28

Commissioner for Oaths, CAP 33

Sheriffs Act, CAP 37

Debtors Act, CAP 77

Civil Courts (Attachment of Debtors) Act, CAP 78

Judgement Act CAP 81

Money Lenders Act, CAP 398

Anti-Gender Based Violence Act

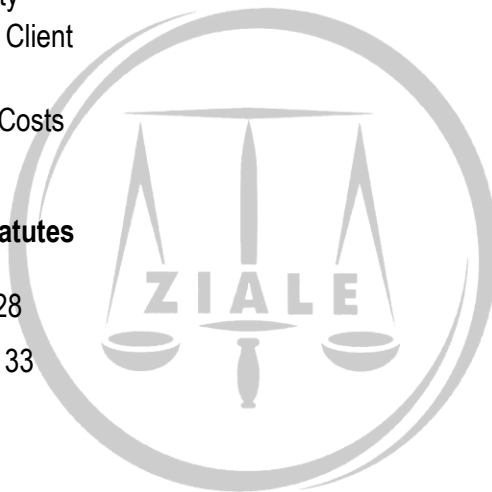
Zambian Civil Procedure: Commentary and Cases Vol. 1 & 2, Hon. Dr. Justice Patrick Matibini, SC

Evidence Act, CAP 43

Evidence (Bankers' Books) Act, CAP 44

Landlord and Tenant (Business Premises) Act, CAP 193

Rent Act, CAP 206



Head 9. Domestic Relations

Head Code:

Head Duration: 27.5 Hours

Head Description

This head introduces learner legal practitioners to various legal issues they would expect to arise in a domestic/home environment.

Rationale

Clients need guidance on Domestic Relations issues. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle matters related to marriage, nullity of marriage, divorce, affiliation and maintenance of children, Legitimacy and Gender Based Violence.

Aim

To train learner legal practitioners in Domestic Relations.

General Outcome

Develop an understanding of Domestic Relations.

Specific Outcomes

- a) Understand the different types of marriages
- b) Draft primary documents such as petitions and other documents
- c) Draft secondary documents such as an answer, cross petition and matrimonial and other Affidavits
- d) Draft documents pertaining to custody and access to children of the family and protection of their rights.
- e) Apply for ancillary settlement and orders which include lump sum settlements and periodic payments
- f) Draft documents for adoption and property settlement
- g) Commence Affiliation proceedings and Maintenance Orders.
- h) Commence proceedings under the Legitimacy Act
- i) Commence proceedings under the Anti GBV Act by and draft accompanying Affidavit for occupation and protection.
- j) Demonstrate the file process in court
- k) Demonstrate dual Legal System to matters relating to Domestic Relations

Key Competencies

- a) Understanding Domestic Relationships,

- b) Analysing Dual Legal System, Marriages and divorce procedures
- c) procedure pertaining to custody and application in the High Court
- d) Analysing Custody and adoption
- e) Understanding Gender Based Violence (GBV)



Head Content

9.1 Domestic Relations

- 9.1.1 What Domestic Relations about?
- 9.1.2 Why it is important to study Domestic Relations?

9.2 Dual Legal System

- 9.2.1 Customary vs statutory
- 9.2.2 Domicile
- 9.2.3 Enforcement of orders/bilateral agreements

9.3 Marriage

- 9.3.1 What is a marriage?
- 9.3.2 Types of marriages (Customary, Statutory and Religious marriages)
- 9.3.3 Jurisdiction
- 9.3.4 Statutory marriage: Licencing of Minister, Place, Notice, Length of stay in district, Foreign marriages
- 9.3.5 Void and voidable marriages

9.4 Divorce Proceedings

- 9.4.1 Divorce (Ground and Five Facts)
- 9.4.2 Judicial Separation (Five Facts)
- 9.4.3 Nullity
 - 9.4.3.1 Void Marriages
 - 9.4.3.2 Voidable Marriages
- 9.4.4 General Practice and Procedure for Petitioner (Petition, Certificate with regard to reconciliation, Marriage Certificate, Acknowledgement of proceedings, Notice of Proceedings, Statement as to the Arrangements for children, Consent, injunctions) Request for Directions, Special Procedure), Decree nisi, and Decree Absolute
- 9.4.5 General Practice and Procedure for Respondent (Answer, Answer and Cross Petition, Injunctions, Affidavit depending on circumstances, Consent for dissolution, Returns completed Acknowledgement for Service to Court)
- 9.4.6 Rescission of Decree nisi

9.5 Custody

- 9.5.1 Principles (Best Interest of Child/children)
- 9.5.2 Types (Interim, sole, joint)
- 9.5.3 Access
- 9.5.4 Procedure pertaining to custody and application in the High Court (How, Who considers Application, When, Revocation)

9.6 Proceedings for Matrimonial Settlements

- 9.6.1 Interim Relief
- 9.6.2 Maintenance Pending Suit
- 9.6.3 Ancillary Relief
- 9.6.4 Lump sum Payment
- 9.6.5 Periodical Maintenance Payments
- 9.6.6 Property Adjustment orders

- 9.6.6.1 Chibwe vs Chibwe and subsequent development of the Law
- 9.6.7 Payments Enforcements Orders
- 9.7 Wilful Neglect to maintain**
 - 9.7.1 Practice and Procedure (Who can apply, when, which Court)
- 9.8 Procedure for Application for Maintenance under the Affiliation and Maintenance of Children Act**
 - 9.8.1 High Court (Originating Summons and Accompanying Affidavit)
 - 9.8.2 Subordinate Court (Complaint, Summons and Affidavit)
- 9.9 Adoption**
 - 9.9.1 Application (Petition, Affidavit, Social Welfare Report)
 - 9.9.2 Procedure and Jurisdiction
 - 9.9.3 Summary Proceedings in the High Court and Subordinate Court
- 9.10 Protection of the Rights of the Child**
 - 9.10.1 Convention on the Rights of the Child
 - 9.10.2 Rights of a Child generally
 - 9.10.3 Parental Responsibility
 - 9.10.3.1 Criminal Liability
 - 9.10.4 Procedure in Relation to a Child in need of care
 - 9.10.5 Applications under the GBV Act and other Statutes
- 9.11 Legitimacy**
 - 9.11.1 Relevance
 - 9.11.2 Originating Process (What Application is made and Where Application is made)
- 9.12 Gender Based Violence (GBV)**
 - 9.12.1 What is GBV
 - 9.12.2 Who can file an Application, When and where?
 - 9.12.3 Filling in Complaint Form and Affidavit
 - 9.12.3.1 Criminal
 - 9.12.3.1.1 Criminal Proceedings
 - 9.12.3.1.2 Criminal Orders
 - 9.12.3.2 Civil
 - 9.12.3.2.1 Civil Proceedings
 - 9.12.3.2.2 Civil Orders
 - 9.12.4 Filling in Affidavit in Response

Recommended Texts and Statutes

Matrimonial Causes Rules 1973 (UK)
Matrimonial Causes Act of 2007
Marriage Act, CAP 50
Legitimacy Act, CAP 52

Adoption Act, CAP 54

Rayden on Divorce Vol. 1 and 2

Anti GBV Act, No.1 of 2011

Gender Equity and Equality Act, No. 22 of 2015

Affiliation and maintenance of Children Cap 64

Bromley's Family Law

Tolstoy on Divorce

Passingham, Law and practice in Matrimonial Cases



Head 10. Criminal Procedure

Head Code:

Head Duration: 62.5 Hours

Head Description

This head introduces learner legal practitioners to criminal procedures.

Rationale

Clients need guidance on criminal procedures. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle matters related to criminal jurisdiction, procedure, offences, trial and sentencing.

Aim

To train learner legal practitioners in criminal jurisdiction, procedure, offences, trial and sentencing.

General Outcome

Develop an understanding of criminal procedure.

Specific Outcomes

- a) Describe the courts of Criminal Jurisdiction
- b) Demonstrate knowledge of public prosecution.
- c) Describe types of offences and criminal procedure.
- d) Apply for preliminary inquiries.
- e) Prepare for trial.
- f) Appeal against the ruling of the court
- g) Advise clients in criminal procedure in respect of Juveniles.
- h) Demonstrate knowledge of inquest procedure.
- i) Analyse different types of sentences
- j) Draft legal documents related to criminal procedure.

Key Competencies

- a) Analysing jurisdiction of different courts
- b) Understanding the arrest of suspects
- c) Drafting Charges and Informations
- d) Analyse roles and functions of the Director of Public Prosecutions

- e) Applying admission of guilt procedure
- f) Understanding Trial proceedings before Courts
- g) Analysing Sentencing and Sentences



Head Content

10.1 Jurisdiction of the Courts

10.1.1 The Courts

10.1.1.1 The Subordinate Courts

10.1.1.2 The Military Court (Courts Martial)

10.1.1.3 The High Court

10.1.1.4 The Court of Appeal

10.1.1.5 The Constitutional Court

10.1.1.6 The Supreme Court

10.1.2 Territorial and extraterritorial Jurisdiction of the Zambian Courts

10.1.3 Criminal liability of natural persons and corporate bodies

10.2 Arrest of Suspects

10.2.1 Arrest on a warrant

10.2.2 Arrest without a warrant

10.2.3 Search warrant

10.2.4 Interview of arrested persons by Counsel (paralegal)

10.2.5 Duties of an Advocate at Police Formations

10.2.6 Interview of suspects by investigators

10.2.7 Conduct of identification parades

10.3 Remand and Bail

10.3.1 Bailable and Unbailable offences

10.3.2 Police Bail (Bond)

10.3.3 Bail pending trial

10.3.4 Bail pending confirmation of sentence

10.3.5 Bail pending Appeal

10.3.6 Constitutional Bail

10.3.7 Drafting Bail Applications

10.3.8 Bail in Offences against state security

10.4 The Director of Public Prosecutions

10.4.1 Constitution of the office

10.4.2 Powers

10.4.2.1 Institute criminal proceedings

10.4.2.2 Consent to prosecute

10.4.2.3 Discontinuance of a prosecution (No Evidence offered/nolle prosequi)

10.4.2.4 Indemnification of offenders

10.5 Drafting Charges and Informations

10.5.1 Introduction to charges and informations

10.5.2 The Charge Sheet

10.5.3 The informations

10.5.4 The Commencement

10.5.5 The Statement of the Offence

10.5.6 Particulars of the Offence

- 10.5.7 Drafting Charges and informations
 - 10.5.7.1 Joinder of counts
 - 10.5.7.2 Joinder of accused persons
 - 10.5.7.3 The Rule against Duplicity
 - 10.5.7.4 Amends to charges and informations

10.6 Admission of Guilt Procedure

- 10.6.1 Offences to which procedure is applicable
- 10.6.2 Procedure
- 10.6.3 Withdrawal of admission

10.7 Trial before The Subordinate Courts

- 10.7.1 Instituting prosecution by complaint
 - 10.7.1.1 Private prosecutions
 - 10.7.1.2 Private prosecutions and the Director of Public Prosecutions
 - 10.7.1.3 Drawing up a complaint
- 10.7.2 Pre-trial proceedings
 - 10.7.2.1 Grant of Legal Aid by the court
 - 10.7.2.2 Bail pending trial
 - 10.7.2.3 Mental Disability of accused persons
 - 10.7.2.4 Juvenile offenders
 - 10.7.2.5 Representing accused persons with conflicting interests
 - 10.7.2.6 Reconciliation and withdrawal of charges
- 10.7.3 Objections to a charge (When and how made)
- 10.7.4 The plea
 - 10.7.4.1 Plea of Guilty
 - 10.7.4.1.1 Statement of Facts
 - 10.7.4.2 Plea of Not Guilty
 - 10.7.4.3 Plea bargaining
- 10.7.5 The Trial
 - 10.7.5.1 Order of witnesses
 - 10.7.5.2 Voir dire
 - 10.7.5.3 Trial within a trial
 - 10.7.5.4 Handling of Witnesses
- 10.7.6 Submissions of no case to answer
 - 10.7.6.1 Drafting Oral Submissions
 - 10.7.6.2 Drafting Written Submissions
- 10.7.7 Ruling on case to answer
 - 10.7.7.1 Ruling of no case to answer (acquittal)
 - 10.7.7.1.1 Order to pay Costs
 - 10.7.7.2 Case to answer on different charge (amendment of charge)
- 10.7.8 The case for the Defence
 - 10.7.8.1 Rights of accused person
 - 10.7.8.2 Order of witnesses
- 10.7.9 Calling evidence in reply
- 10.7.10 Order of Submissions

- 10.7.11 Judgment
- 10.7.12 Proving previous convictions
- 10.7.13 Mitigation and sentencing
- 10.7.14 Committal to the High Court
- 10.7.15 Appeals
 - 10.7.15.1 Bail pending appeal
- 10.7.16 Drafting Charges and Statements of Facts
- 10.8 Trial before the Courts Martial**
 - 10.8.1 Jurisdiction
 - 10.8.2 Convening
 - 10.8.3 Procedure
 - 10.8.4 Appeals
 - 10.8.4.1 Bail pending appeal
- 10.9 Trial before a Juvenile Court**
 - 10.9.1 Constitution
 - 10.9.2 Bail pending trial
 - 10.9.3 When juveniles will not be tried before a juvenile court
 - 10.9.4 Procedure before a Juvenile Court
 - 10.9.5 Appeals
 - 10.9.5.1 Bail pending appeal
- 10.10 Trial before the High Court**
 - 10.10.1 Committal to the High Court
 - 10.10.1.1 The Preliminary Inquiry
 - 10.10.1.2 Summary Committal Procedure
 - 10.10.1.3 Bail pending trial
 - 10.10.2 Amendment and substitution of the information
 - 10.10.3 The Cause List
 - 10.10.4 The Criminal Sessions
 - 10.10.5 Managing Adjournments
 - 10.10.6 Witness list and its amendment
 - 10.10.7 Plea bargaining
 - 10.10.7.1 Plea of guilty and statement of facts
 - 10.10.7.2 Plea of not guilty
 - 10.10.8 The trial
 - 10.10.9 Order of witnesses
 - 10.10.10 Case to answer
 - 10.10.11 Case for the defence
 - 10.10.12 Evidence in reply
 - 10.10.13 Order of submissions
 - 10.10.14 Judgment
 - 10.10.15 Arrest of Judgment
 - 10.10.16 Mitigation
 - 10.10.17 Sentence

- 10.10.18 Appeals
 - 10.10.18.1 Bail pending appeal
- 10.1 Sentencing
 - 10.1.1 Certificates and warrants under section 304,307 and 308 of the CPC Cap. 88
 - 10.1.2 Principles of sentencing
 - 10.1.2.1 Effective day of sentence
 - 10.1.2.2 Mitigatory Factors
 - 10.1.2.3 Aggravating Factors
 - 10.1.2.4 Suspension of sentences
 - 10.1.2.5 Consecutive and concurrent sentences
- 10.2 Sentences
 - 10.2.1 Death
 - 10.2.2 Imprisonment
 - 10.2.3 The Power to Suspended Sentences
 - 10.2.4 Fines
 - 10.2.4.1 Warrant under section 308 of the CPC
 - 10.2.4.2 When not to pay the fine
 - 10.2.4.3 Detention During the President Pleasure
 - 10.2.5 Community Service Orders
 - 10.2.6 Probation Orders
 - 10.2.7 Reformatory Orders
 - 10.2.8 Approved School Orders
 - 10.2.9 Deportation Orders
 - 10.2.10 Discharge
 - 10.2.11 Security to keep the peace
 - 10.2.12 Police Supervision
 - 10.2.13 Suspension and Disqualification of Driver's Licences
- 10.3 Other Orders on the conclusion of a trial
 - 10.3.1 Statutory Judgment
 - 10.3.2 Forfeiture
 - 10.3.3 Restitution
 - 10.3.4 Compensation
 - 10.3.5 Costs
- 10.4 Appeals
 - 10.4.1 Appeals from the Subordinate Courts to the High Court
 - 11.4.1.1 Review
 - 11.4.1.2 Case Stated
 - 11.4.1.3 Appeals by the Director of Public Prosecutions
 - 11.4.1.4 Drafting Notices of Intention to appeals and grounds of appeal
 - 11.4.2 Appeals from the High Court to the Court of Appeal
 - 11.4.2.1 Leave to appeal
 - 11.4.2.2 Appeals by the Director of Public Prosecutions
 - 11.4.2.3 Drafting appeals and grounds of appeal
 - 11.4.2.4 Drafting and Filling of Necessary Documents

- 11.4.3 Appeals from the Court of Appeal to the Supreme Court
 - 11.4.3.1 Leave to Appeal
 - 11.4.3.2 Withdrawal of Appeals
- 10.5 Inquests
 - 10.5.1 Procedure
- 10.6 Criminal Case Flow Management and Self Evaluation

Recommended Texts and Statutes

The Constitution of Zambia, Chapter 1 of the Laws of Zambia
The Supreme Court Act, Chapter 25 of the Laws of Zambia
The Court of Appeal Act, Act No. 7 of 2016
The High Court Act, Chapter 27 of the Laws of Zambia
The Subordinate Courts Act, Chapter 28 of the Laws of Zambia
The Criminal Procedure Code, Chapter 88 of the Laws of Zambia
The Penal Code, Chapter 87 of the Laws of Zambia
The National Prosecution Authority Act, Act No. 34 of 2010
The Legal Aid Act, Chapter 34 of the Laws of Zambia
The Juveniles Act, Chapter 53 of the Laws of Zambia
The Inquests Act, Chapter 36 of the laws of Zambia
The Plea Negotiations & Agreement Act, Act No.20 of 2010
The Defence Act, Chapter 106 of the Laws of Zambia
The Probation of Offenders Act, Chapter 93 of the Laws of Zambia
Archbld-Criminal Pleading, Evidence and Practive Vol. 1 & Vol.2
Anti-Gender Based Violence Act

Head 11. Evidence and Practice

Head Code:

Head Duration: 62.5 Hours

Head Description

This head introduces learner legal practitioners to the practical aspect of the Law of Evidence with the objective and emphasis on understanding case presentation (Civil and Criminal) in the Subordinate and Superior Courts.

Rationale

Clients need guidance on criminal procedures. There is need to equip learner legal practitioners with knowledge and skills that will help them to handle matters related to criminal jurisdiction, procedure, offences, trial and sentencing.

Aim

To train learner legal practitioners in litigation/prosecution with regard to preparations for trial presentations of arguments/submissions in Court

General Outcome

Develop an understanding of Law of Evidence and Practice.

Specific Outcomes

- a) Analyse the law and nature of evidence.
- b) Demonstrate knowledge of rules under which evidence may be excluded.
- c) Demonstrate ability to present a case in court.
- d) Describe types of witnesses.
- e) Demonstrate ability to lead evidence-in-chief.
- f) Demonstrate cross-examination and re-examination.
- g) Prepare argument and submissions.
- h) Draft legal documents related to the law of evidence.

Key Competencies

- a) Understanding the nature of evidence
- b) Presenting of Cases in Civil Trials
- c) Adducing evidence from witnesses
- d) Understanding Examination-in-Chief and Cross Examination

Head Content

11.1 Nature of Evidence

11.1.1 Oral

11.1.2 Real

11.1.3 Confessions and Admissions

11.1.3.1 Trial within a trial

11.1.4 Documentary

11.1.4.1 Production of documents in civil matters

11.1.4.2 Production of documents in criminal matters

11.1.5 Exhibits, including demonstrative

11.1.6 Experts and Opinion evidence

11.1.7 Tape Recordings

11.1.8 Scene

11.1.9 Judicial Notice

11.1.10 Identification

11.1.11 Presumptions

11.1.12 Character evidence

11.1.13 Electronic Evidence

11.1.13.1 Computer generated readout

11.1.13.2 Computer generated printout

11.1.13.3 DNA Evidence

11.1.14 DNA Evidence

11.1.14.1 DNA profiling - the issues and principles

11.2 Rules Under Which Evidence May be Excluded

11.2.1 The manner in which evidence is obtained

11.2.2 Evidence of character and disposition

11.2.3 Hearsay

11.2.3.1 Exceptions and exemptions to admissibility

11.2.4 Privileges

11.2.4.1 General

11.2.4.2 Particular

11.2.5 Previous Convictions-character evidence

11.2.6 Settlement prior to trial and Plea-bargaining

11.3 Presentation of the Case in Civil Trials

11.3.1 Right to begin

11.3.2 Bundles of Documents

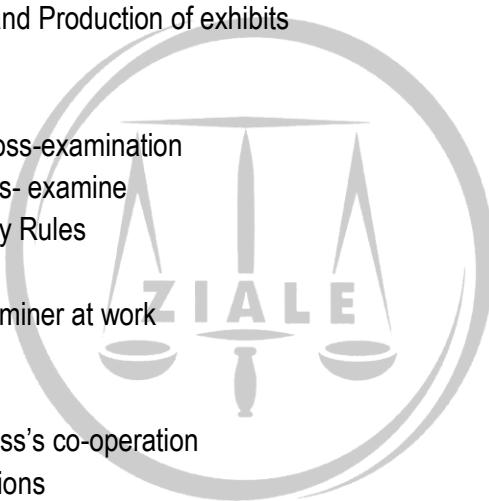
11.3.3 Discovery and Inspection of Documents, including E – discovery

11.3.4 Opening Address

11.3.5 Order of Witness

11.4 Types of Witnesses

- 11.4.1 Adults:
- 11.4.2 Spouses
- 11.4.3 Accomplices
- 11.4.4 Experts
- 11.4.5 Police Officers
- 11.4.6 Children
- 11.4.7 Special witnesses
- 11.5 Examination – In – Chief**
 - 11.5.1 Issues to be proved
 - 11.5.2 Pre-trial preparations
 - 11.5.3 Witnesses to be called
 - 11.5.4 Witnesses not called and not to be called
 - 11.5.5 Examination – in-chief
 - 11.5.6 Leading questions
 - 11.5.7 Refreshing Memory
 - 11.5.8 Presentation and Production of exhibits
- 11.6 Cross-Examination**
 - 11.6.1 Its objectives
 - 11.6.2 Methods of cross-examination
 - 11.6.3 Failure to cross- examine
 - 11.6.4 The Cautionary Rules
 - 11.6.5 Mute Witness
 - 11.6.6 The cross-examiner at work
 - 11.6.7 The approach
 - 11.6.8 Your manner
 - 11.6.9 Gain the witness's co-operation
 - 11.6.10 Leading questions
 - 11.6.11 Phraseology
 - 11.6.12 Remain in Control
 - 11.6.13 The attack
 - 11.6.14 Cause to remember
 - 11.6.15 Test by fact
 - 11.6.16 Test by Mental Reaction
 - 11.6.17 Attacking Credibility
 - 11.6.18 Bias
 - 11.6.19 Motives
 - 11.6.20 History
 - 11.6.21 Contradictions
 - 11.6.22 The talkative witness
 - 11.6.23 The half Truth
 - 11.6.24 Repetition of the Question
 - 11.6.25 Observe and Listen
 - 11.6.26 Test by Comparison
 - 11.6.27 Expert Witness



- 11.6.28 Errors in cross-examination
- 11.6.29 Cross Examination of one's own witness
 - 11.6.29.1 Refractory
 - 11.6.29.2 Hostile
- 11.7 **Re-Examination**
- 11.8 **The Argument/Submission**
 - 11.8.1 Objects
 - 11.8.2 Preparation
 - 11.8.3 Admissions
 - 11.8.4 Discussing the evidence
 - 11.8.5 Illustration and Analogy
 - 11.8.6 Brevity
 - 11.8.7 Repetition
 - 11.8.8 Citation of Authorities
 - 11.8.9 Verbosity
 - 11.8.10 Humour vs the Angry Lawyer
 - 11.8.11 In conclusion
- 11.9 **Applications/Motions**
 - 11.9.1 Procedure of presenting oral and written motions
 - 11.9.2 Drafting
 - 11.9.3 Urgent Applications
 - 11.9.3.1 Habeas Corpus,
 - 11.9.3.2 Exparte applications
 - 11.9.4 Drafting Affidavits
 - 11.9.5 Preparation
 - 11.9.6 Argument
 - 11.9.7 Preliminary Points
 - 11.9.8 Legal Issues to be resolved
 - 11.9.9 Prayer
 - 11.9.10 Dispute of Fact
- 11.10 **Court Case Study**
- 11.11 **Court Language**
- 11.12 **Private prosecutions**
- 11.13 **New Computerised Court**
- 11.14 **Trial Advocacy**
 - 11.14.1 Psychology of the Courtroom
 - 11.14.2 Chamber proceedings

Recommended Texts and Statutes

Juveniles Act, CAP 53

High Court Act, CAP 27

Criminal Procedure Code CAP 88

Penal Code Act, CAP 87

Evidence Act

Subordinate Court Act, CAP 28

Supreme Court Act, CAP 25

Court of Appeal Act, No. 7 of 2016

Electronic Communications and Transactions (ECTA) Act, No. 7 of 2016

Cross on Evidence

Information and Communications Technologies Act, No. 15 of 2009

Hatchard and Ndulo, The law of Evidence in Zambia; cases and materials

Drug Laws

Anti-Money laundering Legislation

Practice Directions by the Chief Justice

Narcotic Drugs and Psychotropic Substances Act, CAP 96

Zambia law Reports

Anti-Corruption Act No. 3 of 2012



SUPPLEMENTARY COURSE: Legal Processes and Research

Head Code:

Course Description

This Head aims to introduce Learner Legal Practitioners to important legal doctrines and enable them to understand how to find, use and understand key legal sources and also to equip them with important skills in terms of how to undertake library-based and empirical legal research. The aim is to develop analytical techniques at the beginning of the programme, which will be developed as student's progress through their career.

Rationale

There is need to equip learner legal practitioners with knowledge and skills in legal writing and research methodology.

Aim

To train learner legal practitioners in legal writing and research methodology.

General Outcome

Develop an understanding of legal writing and research methodology.

Specific Outcomes

- a) Conduct legal writing and legal research
- b) Draft legal documents
- c) Use tools in legal research
- d) Draw rational conclusions.

Key Competencies

- a) Understanding sources of law, legal writing and legal research
- b) Conducting legal research
- c) Applying legal research tools
- d) Applying legal analysis and reasoning

Head Content

12.1 Sources of Law

- 12.1.1 Constitution
- 12.1.2 Legislation
- 12.1.3 Judicial Precedents and Stare decisis
- 12.1.4 Common Law and Equity

12.2 Legal writing

- 12.2.1 Introduction
- 12.2.2 Legal Terminologies
- 12.2.3 Legal writing styles
- 12.2.4 Citation and referencing

12.3 Legal Research

- 12.3.1 Introduction
- 12.3.2 Studying vs Research
- 12.3.3 Primary and secondary sources of information

12.4 Legal documents

- 12.4.1 Researching case Law
 - 12.4.1.1 Use of Law Reports
 - 12.4.1.2 Briefing a case
- 12.4.2 Researching legislation
 - 12.4.2.1 Rules of Statutory Interpretation

12.5 Legal Research and Tools

- 12.5.1 Guidelines of using search engines
- 12.5.2 Credibility of online sources
- 12.5.3 Legal Apps and sites
 - 12.5.3.1 Kas Law,
 - 12.5.3.2 West Law,
 - 12.5.3.3 Lexis Nexis

12.6 Legal analysis and reasoning

- 12.6.1 Adjudication
- 12.6.2 Jurisprudence

Recommended Texts and Statutes

The Zambian Constitution

The Interpretation and General provisions Act, CAP 2

Legal writing in Plain English, Brian A Garner, 2001

The McGraw Hill Handbook of English Grammar and Usage, Larry Beason and Mc Lester, 2004

The Elements of Legal style, Brian A Garner, 1991

The Zambian Constitution

