

ZIMBABWE EZEKIEL GUTI UNIVERSITY

CONSTITUTIONAL LAW

LLB 204

EXAMINATION – JUNE 2018

3 HOURS

Instructions

- i. Answer four questions.
- ii. Answer two questions from Section A. Question 1 is compulsory.
- iii. Answer two questions from section B
- iv. Students may carry unannotated copies of the Constitution of Zimbabwe, 2013 and the Electoral Act
- v. Write legibly

Section A: Answer Two Questions

Question 1 is compulsory

Question 1

Explain and relate the importance of any two Chapter 12 institutions for the protection and enhancement of human rights and the rule of law in Zimbabwe. (25)

Question 2

Discuss the proposition that while the Zimbabwean Constitution provides for the constitutional protection of socio-economic rights, this is not enough to ensure the realisation of these rights. (25)

Question 3

Critically discuss and analyse the *Doctrine of Necessity* as expounded in the case of **Madzimbamuto v. Lardner-Burke [1968] 3 All ER 561** (25)

SECTION B

Answer any two questions in this Section

Question 4

A local businessman Wenston Maripavanhu (68 on 3 May 2018) approached a well-known *sangoma/n'anga* Mai Mashura who celebrated her 58th birthday on New Year's Day this year to help him with some lucky charms as business was low. The *sangoma* prescribes some medicine which has to be mixed with fresh human blood culminating in the two killing a 19 year old female. They were both arrested for murder and were tried, convicted and sentenced to die by hanging after being found guilty of murder committed on 29 February 2008. The sentence was delivered at the conclusion of the Trial on the 2nd of June 2011. They appealed to the Supreme Court which upheld both the conviction and sentence. To date, they remain on the death row.

They have now been joined on the death row by Handiendendega Chandagwinyira who turned 24 on the day President Emmerson Mnangagwa was sworn in (24 of November 2017) who was also convicted of armed robbery and murder and was sentenced to death on the 14th of July 2014. He had committed the offence on Christmas Eve in 2011.

The three have approached you seeking advice of what else they may do to avoid the hangman's noose.

Draft a legal opinion giving such advice.

(25)

Question 5

In the case of *Joseph Evurath Sibanda and Leonard Chikomba v Robert Mugabe N.O., the Commander Zimbabwe Defence Forces and the Attorney-Genera (unreported)*, (Case was heard in November 2017)

Chiweshe JP ruled as follows:

1. *The actions of the Defence Forces (Zimbabwe Defence Forces of Zimbabwe) in intervening to stop the take-over of first respondent's (Mugabe's) constitutional functions by those around him are constitutionally permissible and lawful in terms of Section 212 of the Constitution of Zimbabwe in that:*
 - a. *They arrest first respondent's abdication of constitutional function, and*
 - b. *They ensured that non-elected individuals do not exercise executive functions which can only be exercised by elected constitutional functionaries.*
2. *The actions of the Defence Forces being constitutionally valid, the second respondent has the right to take all such measures and undertake all such acts as will bring the desired end to its intervention.*
3. *The decision by the first respondent to dismiss Emmerson Mnangagwa as Vice President on 6 November 2017 is "Null and Void".*

Thoroughly discuss this decision in view of the provisions in the 2013 Constitution. (25)

Question 6

The Constitution provides that an election must be free, fair and transparent. This position is also reiterated in the Electoral Act, which stipulates transparency as a key principle for free and fair elections. Ever since he assumed the Presidency, Zimbabwe's President has time and time again reiterated that the country is going to hold free, fair and transparent elections.

Thoroughly discuss the legal requirements to be complied with to ensure that the elections are free, fair and transparent. (25)

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