



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

DEPARTMENT OF LAW AND LEGAL SERVICES

EXAMINATION PAPER

COURSE CODE : LLB 111
COURSE TITLE : Legal Research, Writing and Information Communication
Technology
DURATION : 3 Hours
LEVEL : 1.1 116 JUN 2023
DATE :

INSTRUCTIONS TO CANDIDATES:

1. Answer ALL questions. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
3. Students are NOT allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things
4. Write legibly
5. Number your answers accordingly

Question 1

Mr Arnest is a foreign national currently in prison in Zimbabwe. He was extradited to Zimbabwe from Mozambique on charges of computer hacking under the Criminal Code. After his trial, he was convicted and sentenced to 5-years imprisonment. At the same time, the Zimbabwean immigration authorities prepared an inadmissibility report under the Immigration and Refugee Protection Act. This report deemed Arnest inadmissible to Zimbabwe for serious criminality and he was ordered deported, with deportation delayed until the end of his prison sentence. Mr Arnest is Buddhist – his father (whose surname he uses) was a Mozambican. Arnest's mother is from Angola, and Arnest follows his mother's religion. The Correctional Service of Zimbabwe (CSZ) has a chaplaincy service available for inmates, but it does not include religious figures of all faiths. There are no Buddhist chaplains employed by the CSZ. Mr Arnest brought a complaint to the Zimbabwean Human Rights Commission (the Commission), under the Human Rights Act and the Constitution of Zimbabwe Bill of rights, arguing that the CSC has discriminated against him on religious grounds by failing to provide a Buddhist chaplain. The relevant section reads:

It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, or

b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination. "Prohibited grounds of discrimination" include "religion". Upon receipt of Arnest's complaint, the Commission appointed an investigator, as authorized under the Act. An investigator under the Act is responsible for investigating a complaint and reporting on the material facts to the Commission. The Commission then decides whether to refer the matter to a full Human Rights Tribunal proceeding.

In her correspondence with Arnest, the investigator indicated "I will conduct an interview with you before submitting my report. Based on the textual records I have consulted, I believe this is a case that deserves a full Tribunal hearing." The investigator did not, however, contact Arnest again. Instead, two weeks later, she issued her report to the Commission. The material parts of that report read:

I was very skeptical of this complaint, even before I started this investigation. And indeed, I was unable to establish that Arnest is, in fact, Buddhist. Since Arnest is a convicted criminal and must be presumed to be dishonest, I am not prepared to believe him when he claims to be a Buddhist. Moreover, I conducted substantial genealogical research into the surname "Arnest". This included consultation with a genealogical expert. I determined the name "Arnest" is ethnically Flemish in origin. It seems very unlikely a person of Flemish ethnicity from Mozambique is Buddhist. At any rate, given the backlog of human rights complaints, I do not believe the Commission should be prioritizing complaints by prisoners. These should be given much lower priority in favour of complaints by non-criminals. Upon receipt of the investigator's report, the Commission convened a meeting of five members at which the investigator presided as chair. All five members, the investigator included, then deliberated on the matter.

The Commission then decided to reject Arnest's complaint, and issued the following reasons:

On full review of this complaint, we conclude that the Commission has no jurisdiction to hear a complaint in relation to the alleged discriminatory practice. Under section 40(5)(a) of the Act, we may not hear a complaint unless the act or omission constituting the alleged discrimination "occurred in Zimbabwe and the victim of the practice was at the time of the act or omission...lawfully present in Zimbabwe". Mr Arnest has been deemed inadmissible to Zimbabwe under immigration law – he is under a deportation order. He is not a temporary resident, permanent resident or citizen of Zimbabwe. He is not, therefore, "lawfully present in Zimbabwe" for the purposes of s.40(5)(a), even though he is physically in Zimbabwe for the duration of his prison sentence. We will not, therefore, proceed with this complaint. Further, even if we had proceeded with this complaint, we would refuse to recommend the matter be referred to a full Human Rights Tribunal process for the reasons outlined by the investigator in her report. We adopt those reasons in full.

Case dismissed.

Section 40(5)(a) of the Act reads: "No complaint in relation to a discriminatory practice may be dealt with by the Commission under this Part unless the act or omission that constitutes the practice (a) occurred in Zimbabwe and the victim of the practice was at the time of the act or omission either lawfully present in Zimbabwe or, if temporarily absent from Zimbabwe, entitled to return to Zimbabwe".

Question:

Arnest is upset by this series of events, and remains without a Buddhist chaplain while in prison. Using FIRAC prepare a comprehensive critique.

[25 marks]

Question 2

Explain the importance of legal research as an occupational exercise by the following persons:

- a. Legislators, (5)
- b. Judges, (5)
- c. Lawyers, (5)
- d. Law lecturers; (5)
- e. Law students. (5)

[25 marks]

Question 3

'Judicial precedents are the most reliable source of law.' Examine the validity of this statement.

[25 marks]

Question 4

Discuss the assertion that to write intelligently means that a person should know how to write as to be understood, or should know how to put his/her ideas in written words so that he be understood, or writes like people in general express their ideas.

[25 marks]

******End of Examination******