

L101 – LEGAL AND ACADEMIC WRITING

SUGGESTED ANSWERS TO SELECTED MID SEMESTER EXAM QUESTIONS (OCTOBER 2018)

QUESTION 1

Read the case below carefully, and use your newly acquired skills on ‘*How to Read a Case*’ to find the following:

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| i. The facts of the case | (5 marks) |
| ii. The issue before the court | (3 marks) |
| iii. The <i>ratio decidendi</i> | (5 marks) |
| iv. The order of the court | (2 marks) |

THE PEOPLE v ROXBURGH (1972) Z.R. 31 (H.C.)

HIGH COURT

28TH FEBRUARY, 1972

Flynote

Court - Jurisdiction - Extra-territoriality - Limited to citizens of Zambia - Penal Code (Amendment) Act of 1970, S. 7 construed.

Criminal law - Bigamy - Offence committed by second bigamous marriage

Cases referred to:

(1) McCleod v Attorney-General [1891] A.C. 455

Legislation referred to:

Penal Code, Cap. 6, s.145

Penal Code (Amendment) Act of 1970, s.7

Criminal Procedure Code, Cap. 7, s.10

Offences against Persons Act 1861 (England) s.57

For the accused: G.C. Walisko, of Christopher, Russell Cook and Co.

For the People: S.D. Mhango, State Advocate.

Judgment

DOYLE, C.J.: The accused was convicted of the offence of bigamy contrary to s. 145 of the Penal Code, Cap. 6 in the Subordinate Court of the First Class, Lusaka. In this case the bigamous marriage was entered into in the United States of America, and the Defendant is not a citizen of Zambia. The learned magistrate posed a question of jurisdiction to himself. He posed one question and he answered another. The question he posed to himself was 'Can a man who resides in Zambia be tried by a Zambian court for a crime which he is alleged to have committed in some other country?' Then he went on to say: 'I propose to answer this question. Yes, he can be'. He then completed his judgment by this: 'at this stage my ruling is that this court has jurisdiction to try any crime committed anywhere in the world provided the accused is within the court's jurisdiction.' A more absurd proposition I have yet to hear. That not only answers his first question, but states that any person who arrives in an aero plane and stops in transit in Zambia and has committed an offence in another country can be tried by our courts. It is a startling proposition and one with which I would hold no truck. However, let me go back to the question whether residence creates such jurisdiction. The learned magistrate argued that this limitation of jurisdiction has no place in a modern State. I would be very pleased to learn in what modern States this doctrine prevails. I do not, of course, know the law of all States, but I am not aware of any modern State which claims this world-wide jurisdiction. Solely on principle there is a very good reason why the jurisdiction should not be claimed. If it were correct that the Zambian courts had this enormous jurisdiction, then any person could come and complain to the police about crimes having been committed in other countries by residents of Zambia. Our police would have the duty to investigate them. That is a task beyond our powers. I have not the slightest doubt that this extensive jurisdiction does not prevail in Zambia. Section 145 of the Penal Code, states the offence of bigamy, and it does not make reference to a marriage taking place elsewhere than in Zambia. This indicates that the legislature was not trying to deal with the offence of bigamy in relation to such marriages. The legislature has in fact dealt with extra-territorial criminal jurisdiction in the Penal Code (Amendment) Act, 1970. Section 7 reads as follows - 7. (1) Subject to subsection (3), a citizen of Zambia who does any act outside Zambia which, if wholly done within Zambia, would be an offence against this Code, may be tried and punished under this Code in the same manner as if such act had been wholly done within Zambia. (2) When an act which, if wholly done within Zambia would be an offence against this Code, is done partly within and partly outside Zambia; any person who within Zambia does any part of such act may be tried and punished under this Code as if such act had been wholly done within Zambia. (3) Nothing in subsection (1) shall render any person liable to be tried and punished under this Code in respect of any act done outside Zambia which, if wholly done within Zambia, would be an offence against this Code if such person has been convicted and punished outside Zambia in respect of the same act, but, save as aforesaid, any such conviction shall, for the purposes of any law including this Code, be deemed to be a conviction for the said offence against this Code.³³ That section in effect states - (1) that the Zambian courts have jurisdiction in respect of offences committed by Zambian citizens anywhere in the world; (2) that the Zambian courts have jurisdiction in respect of offences committed by any person, whether a Zambian citizen or not if the offence has been

partly committed in Zambia. The section by implication disclaims jurisdiction in respect of offences committed by non - Zambians outside Zambia. It has been argued by the State that bigamy consists of two criminal acts, one, the first marriage and two, the second marriage. That in my opinion is not correct. The criminal act is the second bigamous marriage. The first lawful marriage is not part of the crime, but merely creates a status in relation to which a crime can subsequently be committed by a second marriage.

I quash these proceedings in total. The defendant is discharged. Proceedings quashed.

FACTS

This was an appeal against conviction for the offence of bigamy, contrary to Section 145 of the Penal Code. The Appellant was not a Zambian citizen, and he had entered in to the bigamous marriage in the United States of America. **(5 MARKS)**

ISSUE

Whether a man who resides in Zambia can be tried for an offence which he is alleged to have committed on another country. **(3 MARKS)**

RATIO DECIDENDI

The Penal Code provides for extra territorial criminal jurisdiction of the courts in Zambia. A Zambian, who commits an offence outside Zambia, either wholly or in part, may be tried for the offence in a Zambian court. However, a Zambian who was tried and convicted for an offence outside Zambia which is also an offence in Zambia cannot be tried by a Zambian court for the same offence. By implication, the Penal Code does not grant Zambian courts jurisdiction to try offences committed by non-Zambians outside Zambia. Therefore, it was not correct for a Zambian court to convict the Appellant.

(5 MARKS)

ORDER

The Appellant was discharged and the proceedings were quashed.

(2 MARKS)

QUESTION 3

Professor Bob Squarepants is in the process of writing an article entitled, 'How to Report Court Cases'. Below are some of the materials that he used in his research. He has asked you to prepare a reference list by using the OSCOLA style of referencing:

- a. Rosalyn T Zulu v The People. The case was recorded on page 55 of the Zambia law Reports in 1980. **(2 marks)**
- b. 'The Lawyer as a Citizen', an article written by Dr Simon Kulusika in The Zambia Open University Law Journal volume 1 of 2016. It was published by Mission Press Limited in Ndola. **(3 marks)**
- c. A textbook entitled Understanding the Law that was written by Geoffrey Rivlin. Professor Squarepants read the fifth edition that was published in 2009 by oxford university press. **(3 marks)**
- d. Section 3 of the Interpretation and General Provisions Act Chapter 2 of the Laws of Zambia. **(2 marks)**
- e. Section 18 of the Independent Broadcasting Authority (Amendment) Act No. 26 of 2010. **(2 marks)**
- f. An article entitled Media Law and Reforms and written by James Nyirenda. It was donloaded on 24th September 2018 from <http://zambia.misa.org/category/media-law-and-reforms/>. **(2 marks)**
- g. The preamble of the Public Order Act, chapter 104 of the law of Zambia. **(2 marks)**
- h. The case of Carlil v Carbolic Smoke Balls which is a reported case in the 1899 Queens Bench law reports on page 394. **(2 marks)**
- i. Statutory Instrument Number 170 of 2018. **(3 marks)**
- j. Article 1 of the amended constitution. It is act number 2 of 2018 **(2 marks)**
- k. The case of the people v Clifford Dimba. It is Supreme Court judgment number 14 of 2015. **(2 marks)**

REFERENCES

STATUTES

The Constitution (Amendment) Act No 2 of 2018 (2 MARKS)

The Independent Broadcasting Authority (Amendment) Act No 26 of 2010
(2 MARKS)

The Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia
(2 MARKS)

The Public Order Act Chapter 104 of the Laws of Zambia (2 MARKS)

STATUTORY INSTRUMENTS

Statutory Instrument No 170 of 2018 (3 MARKS)

CASES

Carlil v Carbolic Smoke Balls (1899) QB 394 (2 MARKS)

The People v Clifford Dimba [2015] ZMSC 15 OR (2 MARKS)

The People v Clifford Dimba SCZ No 14 of 2015

Rosalyn T Zulu v The People (1980) ZR 55 (2 MARKS)

BOOKS

Rivlin, G **Understanding the Law** (5th Ed, Oxford University Press, 2009) (3 MARKS)

JOURNALS

Kulusika, S *'The Lawyer as a Citizen'* (2016) 6 **The Zambia Open University Law Journal** (Mission Press Limited, 2016) (3 MARKS)

INTERNET SOURCES

Nyirenda, J **Media and Law Reforms** <http://zambia.misa.org/category/media-law-and-reforms/> accessed 24th September 2018

(3 MARKS)