LEGAL JOURNAL

OF THE

ZCAS-U LAW ASSOCIATION

"Una stamus in excellentia."

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INSIDE THIS ISSUE

A COMMENT FROM OUR HEAD OF DEPARTMENT

This journal is the first issue in a series of quarterly journals to come, for the ZCAS-U Law Association. The journal is an attempt at taking learning outside of the classroom as well as encouraging student research within the student community. It also plays an important part in informing the community at large in certain aspects of the law. As such this journal covers various contemporary issues as well as historic perspectives, which are all pertinent in today's fast-paced society. The effort is sterling and we can only wish all the readers, both legal and otherwise, good reading.

With Best Wishes,

Douglas W Rolls

HOD: Law

NEWS ITEMS

ZCAS-U'S NEWLY OPENED LEGAL CLINIC

We are pleased to inform one and all that ZCAS University now has its very own Legal Clinic, which is currently operational and running under the school's Law Department.

The mission of the ZCAS-U Legal Clinic is to provide high-quality legal services to underserved individuals and communities, while offering law students practical, hands-on experience under the guidance of experienced attorneys.

The overall goals and objectives of the ZCAS-U Legal Clinic are:

1. **Providing practical experience to law students so as to enable them to develop their legal skills.**
2. **Enhancing access to justice through pro bono services offered to indigent people, thus helping to close the justice gap.**
3. **Fostering professional development for participating students, as well as cultivating a strong sense of ethics and cultural sensitivity.**

The clientele of the ZCAS-U Legal Clinic will consist of those who require pro bono legal services the most – indigent people in society. And the scope of services available ranges from legal research, advice, consultation, document drafting, negotiation support, representation in both civil and criminal matters in the Magistrate Court, High Court, and the Superior Courts to juvenile offenders, individuals and groups who may not otherwise have access to legal representation.

The ZCAS-U Legal Clinic is located on the University's campus; in the Levy Mwanawasa building, room 111 which is on the first floor.

CELEBRATING 50 YEARS OF THE SUPREME COURT MOOT COMPETITION

ZCAS University was most ably represented during the '*Celebrating 50 Years of the Supreme Court Moot Competition*.' Our team left an indelible mark on the competition's first round; in a remarkable display of legal acumen, they defeated the formidable UNILUS University as they skillfully presented their case as respondents. This victory catapulted them into the semifinals.

In the second round of the competition our team faced yet another formidable opponent in Cavendish University. In this subsequent round, ZCAS University took on the role of appellants. However, this time around the victory was not secured.

More than just a win-lose situation; participation in this moot court competition provided valuable learning experience for all who took part. We extend our heartfelt congratulations to our team for their dedication, hard work, and sportsmanship throughout this challenging competition. And we would also like to give special thanks to their mentors who are our very own lecturers from the law faculty.

Our team with their mentors alongside them.

From left to right: Mr. Chaponga Nguluwe, Nsama Ntinda, Tiyamike Phiri, Mumbi Chisanga, Samuel Mpamba, and Mrs. Natasha Chirwa Lungu.

THE LAWS OF WAR

BY

CHANDA KAMFWA

Wars have existed since the dawn of civilization. The earliest recorded war in history dates back to the year 2700 B.C. in a region that was then known as Mesopotamia; and it is the contention of historians that this war was likely fought over scarce resources during the time when human societies were transitioning from the hunter-gatherer way of life to the agriculture-focused way of life. As there was only so much arable land and pasture, as well as reliable water sources, to go around, people decided to resolve the dispute of 'who was going to get/have what' in a way that would guarantee their side the best chances of success – violence. And wars have continued to be fought throughout human history, right down to our present day. Although the reasons for the countless wars that have happened since may or may not differ greatly from those that engendered the first, one thing is for certain: warfare has evolved throughout the times. For instance, in terms of ranged-weapon combat, we have gone from throwing stones or rocks with slings to throwing explosive grenades; and, in terms of military vehicles, we have gone from horse-powered war chariots to armored tanks with inbuilt firepower. Not to mention the very modern-day possibility of mass destruction as a result of the steep advancements in military technology. It is certainly true that violence has always been the name of the game when it comes to warfare; but the wars of today are just incredibly more ruinous.

Wars already heap immense suffering onto those whose lives are disrupted by it. But, for a war to be waged minus any concrete rules in place, such that 'anything goes' whether it is a hit or a miss or whether it causes irrevocable agony for generations to come, has been decided is too much to ask for from collective humanity. This has led to the creation of international agreements, made with the aim of minimizing the brutality and suffering caused by war,

whilst still acknowledging the fact that violence has been resorted to as a way of settling the particular dispute at hand. This series of agreements is known as the Geneva Conventions.

So what *are* some of the rules of war as agreed upon by the Geneva Conventions, and how did they come about? Well, why don't we find out.

THE RULES OF WAR

The spirit of humanitarianism can be said to be the Mother of the rules of war. These rules set out to place basic limits on warfare so as to protect those who are not directly engaged in the fighting as well as those who were once engaged but are not any longer, perhaps due to illness or injury.

The true genesis of the rules of war can be traced back to a Swiss businessman by the name of Henri Dunant. While on a business trip in Italy in the year 1859, Dunant stumbled across the aftermath of the Battle of Solferino which had been fought in the Second War of Italian Independence. The war-inflicted anguish Dunant witnessed changed the course of the rest of his life. From then on he was devoted to pioneering some sort of solution to the suffering that always came hand in hand with war. His tremendous efforts culminated in the creation of the Red Cross which was – and still is, to a considerable extent – a humanitarian organization with the mission of providing relief to combatants injured during and after battle, regardless of which side they are/were fighting for. And the symbol of the Red Cross was to signify protection from armed conflicts or military attack, to allow medical personnel to perform their work without any interference. This was the premise of the first Geneva Convention held in the year 1864 and it was initially signed by 12 European countries, with more countries following suit in the years to come. Today, the Red Cross, together with the Red Crescent, has expanded the scope of its mission by including any and all crises that would require alleviation of human suffering.

The second Geneva Convention was held in the year 1906. It established how a hospital ship is to be defined in naval warfare, the rule that shipwrecked personnel must be rescued even if the rescuing party is not of the same side in the conflict, and that neutral parties providing medical assistance must be free

from attack so long as they maintain their neutrality.

The third Geneva Convention was held in 1929, and it established how prisoners of war (POWs) are to be treated. Articles 13, 14, and 16 of this treaty relate to the physical wellbeing of POWs, in that they must not be subjected to torture, inhumane treatment, or medical experimentation; and they must also be protected from acts of violence, as well as exposure to insults and public curiosity. Article 17 specifies the only information POWs are mandatorily required to provide to their captors: name, rank, date of birth, and serial number/ military service number. Article 23 stipulates that female POWs are to be treated with the due consideration. Articles 50 and 54 relate to the environment POWs are to be detained in, in that the housing provided should be adequate, and clean; additionally, POWs should be provided with sufficient food and clothing, as well as medical attention when the need arises. Articles 109 and 110 provide for the repatriation of critically ill POWs. And Article 118 provides for the release of all POWs once the conflict has come to an end.

The fourth Geneva Convention was held in 1949, and it is probably the most notable of all the Conventions with regards to how wars are actually fought. (Think WW2, Hitler, and all of the damage him and the Axis powers managed to inflict on mankind. National governments around the world decided that there was a very real need to come to an agreement such that that extent of devastation would never again be permissible – and the Nazis, themselves, did not get away with it completely as certain senior members of the Nazi party, amongst others, were brought to trial and convicted in the first ever international war crimes tribunal which is more commonly referred to as the Nuremburg trials.) This Convention established the rights of civilians, particularly with respect to their immunity. The agreement was that civilians must never be targeted in a military attack, and this protection extends to resources that are essential for their survival. The stern implication is that attacks are always to be carried out discriminately; and, as such, a distinction must always be made between who/what can be attacked and who/what cannot. Thus civilians should be left to live their lives as 'normally' as they possibly can.

Civilians were also provided with rights to protection from torture, inhumane or degrading treatment, medical experimentation, pillaging, discrimination on racial or ethnic grounds, and other similar atrocities. Lastly, the fourth Convention also mandates that safe zones and hospitals be put in place for the sake of those who are vulnerable, and also for the unrestricted passage of medical items.

The Geneva Conventions have been ratified by 196 states and this includes all members of the UN, both Vatican City and Palestine as observers of the UN, as well as the self-governing Cook Islands. Thus the rules of war, as set out by the Geneva Conventions, are indeed universal in their application. State forces as well as non-state groups are equally expected to obey the rules of war. Failure to heed the rules of war constitutes a violation of international humanitarian law (IHL). Acts with the potential to be deemed as violations of IHL are always documented, as much as they possibly can be. Investigations into the acts in question may be opened and carried out by either the State in which the acts occurred or by international courts such as the International Criminal Court (ICC). The ICC's scope of interest is limited to the most serious violations of IHL such as genocide, war crimes, crimes against humanity, as well as the crime of aggression. Prosecutions seek to establish accountability for the atrocity committed as well as achieve justice for the victims. It is worthy of note that the ICC tries individual persons, not states or state-organizations; thus, even a head of state is not above being tried for a violation of IHL. (Most certainly, had Hitler been alive – or *found*, depending on who you ask – after the fall of Berlin, he would have faced charges of war crimes right alongside his senior Nazi party officials as well as German industrialists, judges, lawyers, and even doctors alike, in the Nuremburg trials of 1945-1946.)

And in addition to the Geneva Conventions there are Additional Protocols which further supplement and strengthen the rules of war.

***Enough of the past*, however. What about the rules of war *today*? Where domstates worldwide stand on the subject of the rules of war? Well, inasmuch as the rules of war exist, they have not always been followed to the letter. And the perfect case in point is that of one of the most recent**

and still ongoing wars to date – the Russo-Ukrainian war.

THE RUSSO-UKRAINIAN WAR

With it being well over a year since Russia invaded Ukraine, a lot has already happened. And we can only begin to speculate as to when this war will actually come to an end. *But – again – what about the rules of war?* Has the aggressor in this conflict managed to, at the very least, preserve the bare minimum of human dignity that the rules of war were designed to uphold? Well, unfortunately, the answers to those questions appear to be in the negative so far.

Over the course of Russia's military campaign, several accounts have emerged which point to a pattern of violence and systematic brutality, particularly against civilians. The evidence is indeed being documented by ordinary Ukrainians, journalists coming from all over the world, lawyers versed in IHL, and the chief prosecutor of the ICC has even been to Ukraine to visit some of the sites at which potential war crimes were committed. An investigation has been opened by both the state of Ukraine as well as the ICC.

The abduction, torture, rape, and point-blank execution of civilians, as well as failure to wage warfare discriminately, are all potential charges that are looming above the heads of members within the Russian military personnel. Names of certain Generals have already come to the surface.

One such incident that demonstrates Russia's flout of the rules of war is the tragic bombing of a maternity hospital in the Ukrainian city of Mariupol. On the 9th of March 2022, the Russian Air Force carried out an indiscriminate air raid in this city; and this resulted in the total

wreckage of a large maternity hospital, which also included a children's ward.

Local authorities reported that a total of at least 17 persons were injured, with a death count of 4 which, very sadly, included a pregnant mother who was actually in labour at the time the bombs were dropped.

An incident similar to the one in Mariupol – only that this time it was an apartment building complex instead of a hospital – occurred in mid March 2023. The Russian Air Force carried out a missile strike on the city of Dnipro, and neither Ukrainian civilians nor civilian infrastructure were spared. A total of 400 people were left homeless; the casualty rate reported that 46 people were killed, 80 injured, and 11 missing. And, again, this was a clear demonstration of Russia's failure to wage war discriminately.

Another incident occurred in the Ukrainian village of Bucha, on 144 Yablunksa St. The bodies of 8 adult men were discovered behind a building that served as a makeshift control base for the Russian army. The bodies of the 8 men bore obvious signs of torture in addition to the evidence that they were executed at point-blank range. And, sadly, this is not an isolated incidence. In the village of Zdvyzhivka, the bodies of 5 adult men were found in the backyard of a house that had been commandeered by Russian troops as they were making their advance toward Ukraine's capital of Kyiv. Again, the bodies also bore signs which pointed to torture as well as point-blank execution. From the rear of buildings, to the backyards of abandoned homes, to even the wilderness of the Ukrainian forest, the bodies of civilians are being uncovered in several villages (and their surrounding areas) which were previously under Russian occupation.

The incidents under investigation for war crimes in the Russo-Ukrainian war numbers into the tens of thousands. After the conflict comes to an end, it is indeed possible that leaders within the Russian Armed Forces may be brought to trial for war crimes, either by the ICC or any

other such international tribunal. If found guilty of war crimes, the war criminals may face terms of imprisonment of variable length, including life imprisonment, or death by execution. And as for Russian President Vladimir Putin, a warrant for his arrest has already been issued by the ICC for his alleged role in the unlawful deportation of Ukrainian children to Russia. Inasmuch as this principal development is welcome news to those alleging that war crimes have been committed in this ongoing conflict, only time will tell if these alleged war criminals will be brought to stand trial.

Did you know? **Lady Justice is the name of the woman portrayed in the iconic symbol that we have come to associate with the law. (If you can't quite recall her, take a look at the cover of this journal once more.) She holds a scale in her hands which represents the fact that justice always looks at both sides of a dispute, a sword which signifies the swiftness with which justice is carried out, and she also wears a blindfold denoting her impartiality.**

LAWYER, ATTORNEY, SOLICITOR, BARRISTER – ARE THEY ALL THE SAME?

BY

CHANDA KAMFWA

Generally speaking, Zambian society knows *who* a lawyer is – a person who has undergone training at a Law School and holds a Bachelor of Laws degree, and perhaps has even gone beyond that to obtain their practicing certificate, thereby enabling them to offer legal representation in court. That is how the term 'lawyer' is averagely understood. However, most if not all of us have, at the very least, heard of the terms 'attorney,' 'solicitor,' and/or 'barrister,' at one point in time or another. And be it through the programmes that we watch on television or the books that we read, we have all surely garnered the sense that the terms 'lawyer,' 'attorney,' 'solicitor,' and/or 'barrister,' are synonymous to a certain extent; in that the persons who have these terms attributed to them, as titles, are all involved in work that is of a legal nature. But is there really a difference between these terms, or *are they all the same*? Well, that is what this short article is going to consider.

LAWYERS

The definition of a lawyer has already been provided, so let us just get straight into how the term can be distinguished. 'Lawyer' is the umbrella term under which the other three may be categorized; but, it should be noted that both a person who has completed Law School as well as a person who has completed Law School *and* obtained their practicing certificate can be referred to as a lawyer. With respect to someone who holds a practicing certificate in addition to a Bachelor of Laws degree, such a person is able to provide legal counsel to clients as well as represent them in litigation. In the Zambian context, the representation of clients in legal proceedings is known as advocacy; therefore, a person with the qualifications to do so is also referred to as an advocate.

A fun fact about the term 'lawyer' is that it is especially prevalent in Common Law jurisdictions. And, for those of us who are currently studying to become lawyers in Zambia ourselves, we have definitely noted that, whenever we have come across a non-English case, the term 'lawyer' has been seldom used.

ATTORNEYS

The term 'attorney' is not too unfamiliar in Zambian society, for the fact that it is frequently used within the legal profession; however, the context in which it is used is usually more so inclined to the meaning of '*power of* attorney,' which is the formal instrument employed by a person to empower another person to act on their behalf in either general or specific circumstances. Unfortunately, though, that is not the kind of attorney we wish to distinguish in this article.

There is a saying, "*All attorneys are lawyers, but not all lawyers are attorneys*." Indeed, in terms of legal educational requirements, an attorney is in fact a lawyer who has undergone the necessary Law School training, and holds a Bachelor of Laws or Juris Doctor degree. (A Juris Doctor – or Doctor of Jurisprudence – degree is the graduate degree awarded to those who complete Law School in the United States, so it actually the equivalent of a Bachelor of Laws degree.) However, in addition to a degree, an attorney is a person who has also been admitted to the Bar, which means that they are a licensed legal practitioner. Therefore, an attorney is much the same as a lawyer who holds both a law degree and a practicing certificate here in Zambia. Only that the term attorney is more common in the American legal system, but the two terms mean the exact same.

SOLICITORS

The term 'solicitor,' as used to describe a type of lawyer, is not as commonly used within the legal profession here in Zambia; yet the term is indeed common in the birthland of the Common Law. In order to become a solicitor, a person must either undergo the standard three-year training at a Law School, or a one-year legal practice course and examination at a Law college which is then followed up by two-years-worth of experience under a training contract. A solicitor typically deals with legal matters outside of litigation, such as conveyancing for example; however, a solicitor may also represent their clients in litigation, so long as they have equally obtained a practicing certificate so as to become what is known as a 'solicitor advocate.' And it is worthy of note that this advocacy qualification only encompasses representation in the lower courts. Thus, in order for a solicitor to provide legal representation in the higher courts of the hierarchy, they would have to obtain a further advocacy qualification.

BARRISTERS

The term 'barrister' appears to be yet another feature that did not come along with the Common Law legacy that our country's legal system inherited. The educational requirements for one to become a barrister involve the standard three-year training at a Law School, or a non-law degree in addition to a Graduate Diploma in Law. This is followed by a one-year course at Bar School which is the vocational component of the training that is involved in becoming a barrister; and after being called to the Bar, a barrister-in-training will undergo what is known as 'pupillage,' and this is basically work-based training that is this done with the goal of meeting the necessary requirements for the Professional Statements for Barristers. Once this process is complete, a barrister may actually undertake to act as an advocate for clients, as well as any ancillary work in relation to trial preparations. Again, it is worthy of note that barristers have the right of audience in all courts; and, needless to say, they usually prefer to be found in the higher courts.

THE ANTI-DEATH PENALTY MOVEMENT

BY

CHANDA KAMFWA

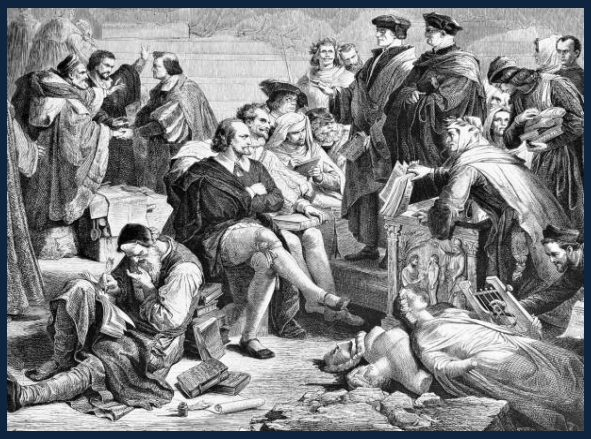
The capital punishment has been a feature of justice systems throughout the centuries. Similar to the justice systems of today, earlier justice systems, such as the laws contained in the Old Testament as well as the Code of Hammurabi, prescribed punishments that were proportionate to the offence committed – "*an eye for an eye*." The essence of this expression is equal to that which is contained in the legal principle of *lex talionis*. Lex talionis is Latin for "the law of retaliation." Certain justice systems have taken the meaning of this principle quite literally, in that the punishment prescribed mirrors the transgression committed. So it is a literal eye for a literal eye – and, when the offence committed is the taking away of someone else's life, the perpetrator's life will equally be taken away. Other justice systems, however, have taken on a less stringent approach by way of prescribing punishments that, although not mirroring the transgression exactly, are still proportionate to the offence that has been committed. So, instead of a literal eye for another literal eye, it is a literal eye for a decided amount of money that will be deemed to atone for the error; and, in the case of the taking away of someone else's life, banishment or something to that effect would be deemed to atone for the error, instead of equally taking away the life of the perpetrator.

The death penalty has always been the most severe of punishments; and that is not only because it results in the cessation of one's life, but also because of the fact that, historically, the majority of the methods used to execute criminals were designed to cause unfathomable pain and suffering in addition to the death itself. What is more is that executions were usually done in public, chiefly to serve as an example to others.

It is true that the practice of capital punishment was once generally accepted without much protest from society at large. However, at this particular moment in time there is a very significant shift that is in motion with respect to the capital punishment. Worldwide, the growing attitude towards capital punishment is that of abolitionism. You

may wonder, though, what is it that has brought about this change?

THE ROOTS OF THE ANTI-DEATH PENALTY MOVEMENT



Well, the conversation really began in the 17th and 18th centuries, when prominent European writers and thinkers discoursed over reforms to the justice systems in Europe during the Age of Enlightenment. Among the reforms on the table was capital punishment; and, up until then, the main argument in favor of it was the concept of deterrence. However, it was the view of Enlightenment writers as well as thinkers that the concept of deterrence could not hold water because of the fact that the crimes which were punishable by death did not decrease in frequency at all, even after the public execution of a criminal who had been convicted for the very same offence. Actually, it was the contention of Enlightenment writers and thinkers that capital punishment served as an example in cruelty more than anything else. It was as if the state was bringing itself down to the level of the criminal by authorizing their execution, as it were. And, most certainly, the conversation did not end there.

The conversation was carried forth into the 20th Century, and this time around it was more than just a conversation. The year of 1948 was really the dawn of a new era with respect to human rights as, for the very first time, human rights would be protected on a universal scale. The Universal Declaration of Human Rights (UDHR) came into being as a proclamation by the General Assembly of the United Nations. This all-important document laid the foundation for the legal recognition of the fundamental rights of human beings all over the world.

Particularly Article 3 and Article 5 of the UDHR are relevant with respect to the issue of the death penalty. Article 3 provides for the right to life, liberty, and security of the person; and Article 5 provides for the protection from torture or cruel, inhuman or degrading treatment and punishment.

The foundation laid by the UDHR has been built upon by agreements which have been formally concluded and ratified by member states of the United Nations, and these treaties further amplify the message of the UDHR in many ways. One key treaty is the International Covenant on Civil and Political Rights (ICCPR) which came into being in the year 1966 as an adopted resolution by the General Assembly of the United Nations. Among the notable commitments made by this treaty was the inherent respect of the right to life as provided for in Article 6; as well as the protection from torture or cruel, inhuman or degrading treatment and punishment. Then in 1989 came the Second Optional Protocol to the ICCPR which specifically aims at the abolition of the death penalty. The opening Article of the Second Optional Protocol sets the tone of the treaty very precisely: Executions must not occur within the jurisdiction of a state which is party to the Protocol, and every state present must work towards the abolishment of the death penalty within their jurisdictions. The states which are signatories to the ICCPR and the Second Optional Protocol commit to the complete abolishment of the death penalty from their justice systems, both in law and in practice. However, even states which are not party to the Second Optional Protocol but are signatories of the ICCPR may join the anti-death penalty movement of their own accord, and Zambia has recently become one such country.

THE HISTORY OF THE DEATH PENALTY IN ZAMBIA

In Article 12 (1) of the Constitution of the Republic of Zambia, protection of the right to life, as well as its main proviso, is provided.

The specifics of the death penalty in the Zambian justice system are but a carryover from the country's colonial past. Until very recently, the crimes which were punishable by death were murder, treason, and aggravated robbery. However, inasmuch as the death penalty has been a feature of the criminal justice system in this country, only 2 out of the 7

presidents that Zambia has had have actually signed off warrants of execution, and these were the first and second presidents of the Republic. In total, there have been 72 people with sanctioned death sentences; and the last execution occurred in 1997. Nonetheless, capital punishment has continued to be handed down by competent courts to criminals convicted of treason, murder or aggravated robbery. It is only that the execution orders were never signed off, and this resulted in such inmates being put on death row indefinitely. However, more often than not, presidents did choose to commute sentences of death to life imprisonment instead. Therefore, the practice in Zambia since the late 1990's has certainly been abolitionist in spite of the death penalty being in our statute books.

The 25th of May 2022 marked the penultimate milestone in the history of the death penalty in Zambia. Current President Hakainde Hichilema announced that the criminal justice system in Zambia would undergo reform which will see the death penalty being abolished, as well as the offence of criminal defamation of the President being repealed. On the 23rd of December 2022 the final milestone for the death penalty was reached as President Hakainde Hichilema assented to the Penal Code Amendment Bill No. 25 of 2022. Thus the reforms to the criminal justice system in Zambia were given legal effect.

Zambia has now officially joined the growing team of countries around the world who have completely abolished capital punishment. Currently, this movement is being supported by 111 countries. On the other hand, there are 24 countries which fall into the category of being abolitionist in practice; whilst 7 countries only permit capital punishment in exceptional circumstances; and as many as 53 countries still maintain capital punishment as both the law and the practice within their criminal justice systems.

The deciding factor that determines the stance a particular country takes on the issue of the death penalty can probably be better understood in light of the arguments *for* and *against* capital punishment.

The arguments *for* the death penalty can be summarized as follows:

- **deterrence**

- **in terms of taxpayers' money, it is less expensive to execute criminals who have been sentenced to death as oppose to them serving life imprisonment**
- **retributive justice**
- **closure for the victim's family members**

And the arguments *against* the death penalty can be summarized as follows:

- **the methods used to execute criminals are often nothing short of torture; and can categorically fit into the description of cruel, inhuman and degrading treatment/punishment**
- **criminal justice systems are not immune to fallibility; a wrong conviction will result in the needless loss of an innocent life, and this mistake has been made before**
- **there is no substantial proof that the death penalty is an effective deterrent of crime**
- **just because a death is state-sanctioned does not mean that is above being deemed as a violation of the basic human right to life**

The stance taken will depend on how strongly the overall values of a country coincide with the arguments on either side of the issue. With there being an intersection of politics, religion, and the law, capital punishment is both a sensitive and controversial matter of discussion; however, given the way the surrounding conversation is developing, it is very evident that the spotlight is being shone on the law at this particular moment in time. Seeking to uphold the sanctity of life, the law is propelling more all-encompassing fundamental human rights with respect to life; so as to not only protect it, but also to preserve as well. And, as a result, the anti-death penalty movement is gaining momentum the worldover.

UPDATES ON THE ACTIVITIES OF THE ZCAS-U LAW ASSOCIATION

THE ASSOCIATION'S SUCCESSFUL DEBUT DURING ORIENTATION WEEK

In a week filled with enthusiasm and anticipation, ZCAS University inaugurated its very first Orientation Week from the 21st to the 25th of August 2023.

The ZCAS-U Law Association seized this unique opportunity to connect with the incoming first-year students. The event provided a platform for the Association to exhibit its numerous amenities, allowing students to peer into the exciting world of law-related extra-curricular activities.

During the Orientation Week, each committee of the Law Association had a distinct mission.

The Publications Committee, responsible for publicizing Association events and crafting law-centered publications, began to reveal their creative prowess.

The Mentorship Committee, dedicated to aiding students in honing their professional and academic skills, made its presence felt by offering invaluable guidance to incoming students.

The Fundraising Committee, responsible for generating resources for the Association, set out its impressive fundraising activities, which gave students an idea of the many fun-filled events they could look forward to from the Association during this semester.

Last but not least, the Moot Committee, responsible for nurturing students' mooting skills, gave students an exclusive glimpse into the fascinating world of mock trials and legal advocacy.

Beyond the individual committees, the ZCAS-U Law Association's participation in the Orientation Week was about fostering a sense of community. The first-year law students, who may have felt a bit overwhelmed by the transition to university life, found that they have a welcoming and supportive environment within the Association.

PRO BONO PUBLICO - "FOR THE PUBLIC GOOD"

BY

CHANDA KAMFWA

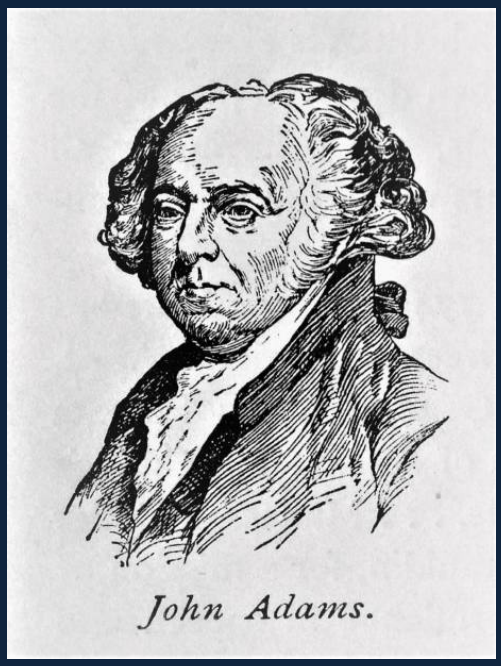
The term '*pro bono publico*' is a Medieval Latin phrase that, when translated to modern English, means for the public good. The shortened version of the term – *pro bono* – generally refers to services that are rendered by a professional either free of charge or at a reduced cost.

The essence of pro bono is the provision of services that are of critical importance to those who do not have the resources that are necessary to acquire such services. By volunteering to provide these services of critical importance, professionals who undertake pro bono work are serving their society as they are imparting a benefit for the greater good.

Pro bono work is a feature of many professions; from the medical field to the education system. (The concept of pro bono also exists in non-professional spheres, such as philanthropy and religion.) However, the term pro bono is indeed most prevalent in the legal profession.

There is a very long-standing history of pro bono work within the legal profession dating as far back as the 15th century. A few centuries on from there came one of the most altruistic examples of pro bono work as set by none other than the 2nd President of the United States of America – John Adams.

JOHN ADAMS AND THE BOSTON MASSACARE



On the night of 5th March, 1770, a regiment of British colonial soldiers found themselves involved in a shockingly violent exchange with a number of American civilians in the city of Boston. Tensions between them had been rising; and, on the night in question, the animosity culminated; a crowd of colonists hurled ice, oysters, broken glass, as well as taunts, onto the regiment of British Redcoats. And, in what was claimed to be an act of self-defence, the soldiers opened fire onto the crowd which resulted in 5 deaths. This event was dubbed the 'Boston Massacre.' The officer leading the regiment as well as 8 soldiers under his command faced murder charges for the 5 colonists.

The Boston Massacre Trials were set to begin in just three weeks time. Those who would stand trial struggled desperately to find lawyers who were willing to represent them. That is until John Adams stepped into the picture; the 35 year-old attorney agreed to head the defense of those accused, and he was assisted by another attorney by the name Josiah Quincy. The motivating factor behind John Adams' choice to volunteer his legal services and represent the British soldiers was plain and simple: he believed that, like all, the soldiers were entitled to a fair trial *and* he also believed that the soldiers had a legitimate defense. And after the effort expended by John Adams and his assisting counsel, the final verdicts were quite favorable to the British soldiers, with all 8 being found not guilty of murder and only 2 being found guilty of manslaughter.

Emulating the example set by John Adams, there is a long history of lawyers who have taken up cases on a pro bono basis. And in addition to altruistic motives, there are definitely other motivating factors such as creating a certain kind of image in a professional sense as well as networking and building connections.

PRO BONO IN ZAMBIA

On the Zambian scene, the Legal Aid Board has been established and it has the mandate to provide legal aid services, as it relates to criminal and civil matters, to indigent persons. The current legal framework as it relates to the Legal Aid Board is the Legal Aid Act No. 1 of 2021.

Another legal body in Zambia that is founded on pro bono is the National Legal Aid Clinic for Women which is a non-governmental organization that provides affordable legal services to marginalized women and children.

The Law Association of Zambia has equally formulated a pro bono policy framework which actually encourages its members to take up files of indigent persons from the Legal Aid Board to work on. Although the policy is not yet conclusive, this pro bono work is intended to form part of the requirements for the annual renewal of practicing certificates. The minimum number of cases a lawyer can work on pro bono is 1 case per year. Beyond this, a lawyer who wishes to provide their services pro bono may apply for permission to do so from the Legal Practitioners Committee.

TRIVIA QUESTIONS

This exercise allows us to refresh our minds as to the things we have learned as well as assess our own aptitude. Give it your best! And you'll find the answers to these questions on the following page.

1. What are the 4 most prevalent types of civil wrong?
2. The case of *Salomon v A Salomon and Co. LTD [1897] AC 22* established separate legal personality, or separate legal persona, as one of the basic tenets upon which a company is formed. Within our Zambian jurisdiction, there is equally an authority that espouses the very same principle of separate legal personality. What is the name of that particular case?
3. What is the official name for the wig worn by lawyers in court?
4. The first stage in the process of making a Constitution is the preparation of the Draft Constitution by the commissioners of the Constitutional Review Commission (CRC). True or False?
5. The Zambian Constitution is borderline in terms of its characteristic, as it is both rigid AND flexible. There is only **1** Part**,** out of the 20 Parts that are there in the Zambian Constitution, which is rigid as to its alteration process, whilst the rest are flexible. What Part is rigid within the Zambian Constitution?
6. Who is the current Chief Justice of Zambia?
7. What is the symbol of law?
8. Because the legal profession seeks to uphold and protect the law, and thereby dispense justice within society, it is referred to as a ____ profession.
9. The English Law (Extent of Application) Act, Chapter 11 of the Laws of Zambia, enables 'English Law' as it refers to the common law, the doctrines of equity and the statutes of general application, which were in force in England on a particular cut-off date, to be in force in the Republic of Zambia. What is said cut-off date?
10. What are the 4 methods of Alternate Dispute Resolution?
11. Which rule of statutory interpretation is used when interpreting a situation that has not, as yet, been foreseen by the Legislature?
12. What is the difference (in Zambian Kwacha) between the current threshold for taxable income in Zambia and the previous one?
13. Currently, the age for late retirement in Zambia is 60 years of age. True or false?
14. Section 41 of the Employment Code Act No. 3 of 2019 provides for paid maternity leave for a female employee who has concluded 2 years of continuous service with an employer. The period granted as maternity leave for a female employee who gives birth to a single child is 14 weeks. How many weeks are added to the 14 in the case of a female employee who gives birth to multiples?
15. What is an exculpatory letter?
16. What difference is there in the remedy for a **breach of condition** and a **breach of warranty**?

ANSWERS:

1. What are the 4 most prevalent types of civil wrong? **Answer**: Breach of contract, tort, breach of trust, and quasi-contractual obligations.
2. The case of *Salomon v A Salomon and Co. LTD [1897] AC 22* established separate legal personality, or separate legal persona, as one of the basic tenets upon which a company is formed. Within our Zambian jurisdiction, there is equally an authority that espouses the very same principle of separate legal personality. What is the name of that particular case? **Answer**: *Associated Chemicals Limited v Hill and Delemain Zambia and Ellis and Company (As a Law Firm) [1998] ZMSC 2*.
3. What is the official name for the wig worn by lawyers in court? **Answer**: A Barrister's wig.
4. The first stage in the process of making a Constitution is the preparation of the Draft Constitution by the commissioners of the Constitutional Review Commission (CRC). True or False? **Answer**: False – the first stage in the process is the setting up/ establishment of the CRC.
5. The Zambian Constitution is borderline in terms of its characteristic, as it is both rigid AND flexible. There is only **1** Part**,** out of the 20 Parts that are there in the Zambian Constitution, which is rigid as to its alteration process, whilst the rest are flexible. What Part is rigid within the Zambian Constitution? **Answer**: Part III, which houses the Bill of Rights.
6. Who is the current Chief Justice of Zambia? **Answer**: The current Chief Justice of the Republic of Zambia is Justice Dr. Mumba Malila, SC.
7. What is the symbol of law? **Answer**: the Scales of Justice.
8. Because the legal profession seeks to uphold and protect the law, and thereby dispense justice within society, it is referred to as a ____ profession. **Answer**: Because the legal profession seeks to uphold and protect the law, and thereby dispense justice within society, it is referred to as a noble profession.
9. The English Law (Extent of Application) Act, Chapter 11 of the Laws of Zambia, enables 'English Law' as it refers to the common law, the doctrines of equity and the statutes of general application, which were in force in England on a particular cut-off date, to be in force in the Republic of Zambia. What is said cut-off date? **Answer**: 17th August 1911.
10. What are the 4 methods of Alternate Dispute Resolution? **Answer**: negotiation, conciliation, mediation, and arbitration.
11. Which rule of statutory interpretation is used when interpreting a situation that has not, as yet, been foreseen by the Legislature? **Answer**: the Fringe Rule.
12. What is the difference (in Zambian Kwacha) between the current threshold for taxable income in Zambia and the previous one? **Answer**: K300 [K4,800 – K4,500 = K300].
13. Currently, the age for late retirement in Zambia is 60 years of age. True or false? **Answer**: False, the current age for late retirement in Zambia is 65 years of age as per the Local Authorities Superannuation Fund (Amendment) Act No. 8 of 2015.

14. Section 41 of the Employment Code Act No. 3 of 2019 provides for paid maternity leave for a female employee who has concluded 2 years of continuous service with an employer. The period granted as maternity leave for a female employee who gives birth to a single child is 14 weeks. How many weeks are added to the 14 in the case of a female employee who gives birth to multiples? **Answer**: Section 41 (2) of the ECA provides that the standard maternity leave will be extended by an additional four more weeks in the event of a multiple birth.
15. What is an exculpatory letter? **Answer**: one of the means by which an employee, who has been charged with misconduct by their employer, is given the opportunity to state their side of the story in relation to the allegations made against them, and this is an essential part of the disciplinary procedure.
16. What difference is there in the remedy for a **breach of condition** and a **breach of warranty**? **Answer**: whilst the remedy for a breach of condition is not only to sue for damages but to also rescind or repudiate the contract, the remedy for a breach of warranty is only a lawsuit for damages.

References for images used:

1. Cover page image sourced from https://media.istockphoto.com/id/841230026/photo/lady-justice-statue.jpg?s=612x612&w=0&k=20&c=LGv7uMkRG_lFxFEkk3AyDX7LQZP9shWnjGGMdXeK2C0=

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7. Image on page 21 sourced from https://media.istockphoto.com/id/186806264/vector/boston-massacre-1770.jpg?s=612x612&w=0&k=20&c=L4EMA-Bmv1mFoCrhTK-zctfs5HtbDDvR9DPeEMPUH5c=

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