

UNIVERSITY OF DAR ES SALAAM

FACULTY OF LAW

**DEPARTMENT OF CONSTITUTIONAL AND
ADMINISTRATIVE LAW**

CONSTITUTIONAL LAW I (LW 100)

COURSE OUTLINE AND READINGS 2000/2001

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SEMESTER I

I. THE THEORY OF STATE AND LAW

1. Bourgeois theory
2. Marxist theory

READINGS:

1. Engels, F., The Origin of the Family Private Property and the State Progress Publishers, Moscow, 1977.
2. Lenin, V.I., State and Revolution, Selected Works, Vol. II, Progress Publishers, Moscow, 1968
3. Marx, K., The Communist Manifesto
4. Kelsen, H., General Theory of State and Law, Harvard University Press, 1945
5. Denisov, A., Theory of State and Law, Progress Publishers, Moscow, 1987

II. MEANINGS AND CLASSIFICATION OF CONSTITUTIONS

1. Definition of constitution
2. Sources of constitution
3. Functions of a constitution
 - (a) Legitimising
 - (b) Ideological

- (c) Organising
4. Classification of constitution
- (a) Written and unwritten
 - (b) Flexible and rigid
 - (c) Federal and unitary
 - (d) Presidential and parliamentary
 - (e) Monarchy and republic
 - (f) Supreme and ordinary

READINGS:

1. Phillips, O. H., O. Hood Phillips' Constitutional and Administrative Law, 7th Ed., Sweet & Maxwell Ltd., 1987
2. Wade, E.C.S., Constitutional Law, 6th Ed., 1960
3. Wade and Bradley, Constitutional Law, 1970
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5. Wheare, K.C., Modern Constitutions, Oxford University Press, London, 1964
6. Weber, Max, Legal Foundations of Modern Capitalism, in Ghai, Y., et al eds, The Political Economy of Law, London, 1987, pp. 47-56
7. Gramsci, A., State and Civil Society, in Ghai, ibid, pp. 198-203
8. Ghai, Y., The Rule of Law, Legitimacy and Governance, International Journal of the Sociology of Law, Vol. 14
9. Kelsen, H., The Basic Norm of a Legal Norm, in Introduction to Jurisprudence, 4th ed., pp.318-322.
10. Tsikata, Fui, Limits of Constitutional Law, (handout)
11. Tsikata, Fui, The Constitution as an economic document (handout)

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1. Kesavananda v State of Kerala, All India Reports (AIR) 1973 Supreme Court 1461, at 1654, para. 787
2. Cooper v Commissioner of Income Tax (1907_ 4 Commonwealth Law Reports (CLR) 1304 in Jennings, W.I., Constitutional Laws of the Commonwealth, p. 83, at pp. 84-85

III. CONSTITUTIONAL HISTORY: DEVELOPMENT OF CONSTITUTION IN SOCIO-ECONOMIC PERSPECTIVE

1. Gentile constitution
 - (a) The gentile constitution in Greek societies
 - (b) The gentile constitution in ancient Rome
 - (c) The tribal constitution in Germanic societies
 - (d) The gentile constitution in selected Tanzanian societies
2. Slave state constitution
3. Feudal state constitution
4. The rise of Bourgeois (liberal) democracy and the contribution of bourgeois philosophers
 - (a) Hugo Grotius
 - (b) Thomas Hobbes
 - (c) John Locke

(d) Rosseau

(e) Montesquieu

READINGS:

1. Anderson, P., Passages From Antiquity to Feudalism, NLB, 1964
- 2 Engels, F. The Origin of the Family, Private Property and the State, Progress Publishers, Moscow, 1977.
- 3 Engels, F., The Part Played Labour in the Transition from Ape to Man Selected Works, Vol. III., Progress Publishers, Moscow, 1977
4. Denisov, A., et al. Theory of State and Law, Progress Publishers, Moscow, 1987
5. Leontyev, Political Economy: A condensed course, International Publishers, New York, 1975
6. Tigar, M.E., Law and the Rise of Capitalism, Monthly Review Press, New York, 1977.
7. Kozlov, G.A., Political Economy: Capitalism, 1977
8. Friedmann, Legal Theory, 5th Ed., Stevens and Sons, London. 1967
9. Dias, R., Jurisprudence, 2nd Ed., Butterworths, London, 1964
10. Bodenheimer, Jurisprudence: The Philosophy and Methods of the Laws, 1962
11. Allen, Stephen Raley, The evolution of governments and laws, Princeton University Press, Princeton, 1919
12. Friedrich, C.J., Constitutional Government and Democracy, theory and practice in Europe and America, New York, 1950
13. McIlwain, Charles Howard, Constitutionalism, Ancient and Modern, Great Seal Books, New York, Rev. ed. 1961

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15. Rose Grahan H., Questions and Answers on Constitutional Law and Legal History, Sweet & Maxwell, London, 8th Ed, 1964,

IV. CONSTITUTIONAL PRINCIPLES AND DOCTRINES

1. Separation of powers and checks and balances
 - (a) Meaning
 - (b) Its application in selected countries
 - (c) Critique
2. The concept of Sovereignty and Parliamentary sovereignty
 - (a) Definition of sovereign and sovereignty
 - (b) Historical development
 - (c) Sovereign power
 - (d) People
 - (e) Parliamentary sovereignty
 - (f) Its application in different states
3. Parliamentary Supremacy
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 - (b) Historical development
 - (c) Parliamentary supremacy
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 - (e) Supremacy of the constitution

- (f) Supremacy of the Law
- (g) Its applicability in several countries
- 4. Ministerial responsibility
 - (a) Meaning
 - (b) Aspects
 - (c) Accountability and responsibility in a parliamentary government
 - (d) Accountability and responsibility in a presidential type of government
- 5. Rule of Law
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 - (b) Principles
 - (c) Equality before the law
 - (d) Supremacy of the law
 - (e) Historical development
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 - (g) Application in selected countries
 - (h) Modern conception
- 6. Independence of the Judiciary
 - (a) Meaning
 - (b) Historical development
 - (c) Principles
 - (d) Constitutional guarantees in selected countries

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2. Wade E.C.S. Constitutional Law, 6th Ed., 1960
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21. –“– *The transition to multi-party democracy*, 1995
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41. United States of America Constitution
42. Basic Law for the Federal Republic of Germany
43. The Constitution of the Republic of South Africa, 1996
44. The Constitution of the Republic of Namibia
45. The Constitution of Kenya
46. *Katiba ya Jamhuri ya Muungano wa Tanzania ya mwaka 1977* (The Constitution of the United Republic of Tanzania of 1977)
47. Constitution of the Republic of Uganda, 1995
48. *Katiba ya Zanzibar ya 1984*

CASES:

1. *Liyanage v R* (1967) A.C. 259
2. *Hinds v R* (1971) A.C. 195
3. *Dupport Steel Ltd.* (1980) 1 WLR 142
4. *Abse and Smith* (1986) QB 536, 553
5. *Malone v Metropolitan Police* (1979) Ch.D 344
6. *Ally Juu ya Watu v Loserian Mollel and another* (1979) L.R.T. n. 6
7. *James Bitta v Iddi Kambi* (1979) L.R.T. n. 9
8. *Hamisi Masisi and others v R* (1985) T.L.R. 24
9. *Ibingira v Uganda* E.A. 306
10. *Ram Jawaya v State of Punjab* (A.I.R 1955 S.C. 549)
11. *Asif Hameed v State of J. & K.* (A.I.R. 1989 S.C. 1899)

12. *Chumchua Marwa v Officer i/c of Musoma Prison & A.G. Misc. Cr. Cause No. 2* of 1988, High Court at Mwanza, unreported
13. *Daudi Pete v R Misc, cr. Cause No. 41 of 1989*, High Court at Mwanza, unreported
14. *Kazembe v Msangi Cr. Cause No. 41 of 1989*, High Court at Dar es Salaam

V. CONSTITUTIONALISM

1. Definition
2. Essential features
3. Constitutions and constitutionalism

READINGS:

1. de Smith, *Constitutional Law*, 1962
2. Shivji, *State and Constitutionalism*, SAPES, Harare, 1991
3. Okoth-Ogendo, H.W.O, *Constitutions without Constitutionalism: An African Paradox*, in Shivji, *Ibid.*
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VI. CONSTITUTIONAL SYSTEMS

1. Parliamentary V Presidential
2. Unitary V Federal

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15. *Constitution of the Republic of Uganda, 1995*
16. *The Constitution of the United Republic of Tanzania of 1977*
17. *Katiba ya Zanzibar, 1984*

SEMESTER II

VII. SOURCES OF CONSTITUTIONAL CHANGE

1. Popular uprising
2. Military coups
3. External imposition
4. Amendment

5. Judicial interpretation

READINGS:

1. Ghai, Y., et al (Eds), Political Economy of Law, pp. 262-271
2. Ghai, Y., Coups and Constitutional Doctrines: The role of courts
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1. Uganda v Commissioner of Prisons, ex parte Matovu (1966) E.A. 514
2. Pakistan case
3. Madzimbamuto v Lardner Burke (1969) 1 a,C, 645
4. Mitchell v D.P.P. (1986) LRC (Const) 127
5. Mokotso & Others v H.M. King Moshoeshoe II and Others (1989) LRC (Const)
[Case Note by Read, J., in J.A.L., Vol. 35, p. 209]

VIII. CONSTITUTION MAKING AND CONSTITUTIONAL LEGITIMACY

1. By Referenda
2. National conference
3. White paper
4. Constituent Assembly
5. Constitutional amendment and Constitutional reform

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IX. CONSTITUTIONS OF SELECTED AFRICAN STATES

1. Preamble and political system
2. National objectives and directive principles of state policy
3. The Executive
4. The Judiciary
5. The Legislature

READINGS:

1. The Constitution of Kenya
2. Constitution of the Republic of Uganda, 1995
3. The Constitution of the United Republic of Tanzania of 1977
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X. STATE STRUCTURE AND ORGANS

1. The Court System of Tanzania Mainland

A. *History of the Courts.*

The Colonial background. The Court System of Tanganyika in the period of German administration; The Court System of Tanganyika during British rule – the Dual.

B. Present Court System

STATUTES:

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22. R.W. Moisey the Role of Assessors in the Courts of Tanzania (1967) E.A.l.j. Vol. 3 No.4 p.348.
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5. *Benjamin Chinjate Kassambara v. Rex (1940)1 T.L.R. ® 249.
6. Bhag Singh v. Rex 1 T.L.R. ® 133
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12. Rioba Nyanchancha v. Rep. 1973 L.R.T. b.31.
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22. Salehe Arepi v. Mohamed Khan (1969) H.C.D. n. 273
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- A. Court System before Independence
- B. Court system after Independence
- C. Court System after Revolution
- D. People's Court system
- E. Present Court System

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DEPARTMENT OF CONSTITUTIONAL AND ADMINISTRATIVE LAW

LW 200: ADMINITRATIVE LAW.

COURSE OUTLINE

General Outline

The course is designed to impart to the law student basic concepts in Constitutional and Administrative Law; reasons for the establishment of administrative agencies and for delegation to these bodies powers of legislation and adjudication. The law students should emerge out of the course with a clear understanding of powers of the courts to control administrative actions and how and when such powers of control may be excluded.

The course is also designed to draw an onsite into other informal controls of administrative action, like the ombudsman and to enable students to understand the process of administrative litigation and remedies available at law to aggrieved persons. The civil service which occupies a significant place in the administrative process is approached not only generally, but also to draw comparative perspective within the commonwealth as a way of understanding better the development of the civil service law in Tanzania.

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CONTROL OF ADMINISTRATIVE ACTION

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JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

(a) THE ULTRA VIRES DOCTRINE

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- Barnard v. National Dock Labour Board [1953]1 All E.R. 1113
As per Lord Denning.

Power Lawfully Vested is not lost by estoppel or non-use:

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[1953]2 Q.B. 18.
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- Odendaal v. Gray 1960 E.A. 165
- Also revisit the readings on “Sub-Delegation” under “Legislative Powers of the Administration”.

Delegation of Powers:

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- Vine v. National Dock Labour Board [1956] 3 All E.H. 939;
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The Alter Ego Theory

- Carltona v. Works Commissioner [1943]2 All E.R. 560.
- Lewisham M.B.C.V. Roberts [1949]2 K.B. 608; [1949]1 All E.R. 815
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The Alter Ego Theory applies only to Ministers and only to powers and functions inherently ministerial.

- Williams v. Home Office (No.2) [1981] 1 All E.R. 1211
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- Titos v. Goefrey Mshana 1981 T.L.R. 128 at 136
- R.v. Secretary of State [1983] 2 All E.R. 233.

Abdication of Power & Acting Under Dictation

- Allingham v. Minister of Agriculture [1948] 1 All E.R. 780
- Ellis v. Dubowski [1921] 3 K.B. 621
- Mills v. London City Council [1925] 1 K.B. 213; (1925) 41 T.L.R. 122
- H. Lavender v. Minister of Housing [1970]3 All E.R. 871; [1970]1 W.L.R. 1231.
- Provident Mutual L.A.A. v. Derby City Council [1981] 1 W.L.R. 173
- James Bitu v. Iddi Kambi 1979 L.R.T. 9
- Hamisi Masisi v.R. 1985 T.L.R. 24.
- R.v. Stepney Corporation [1902]1 K.B. 317

The Rules against delegation would not invite a vacuum or impossibility of performance of functions (contrast also, between Delegation and Devolution).

- Attorney General v. Independent Broadcasting Authority [1973] Q.B. 629; [1973]1 All E.R. 689
- A.G. v. Lesinai Ndeani 1980 T.L.R. 214

Unauthorised assumption of powers:

- Gulamhussein v. Punja Lila 1959 E.A. 734
- R.v. Mangangi Mbuki 1969 H.C.D. 251
- Juma Yusuph v. Minister of Home Affairs [1990] T.L.R. 80
- Sheikh Muhammad Nassor Abdulla v. the RPC & Others [1985] T.L.R. 1

Ratification:

- Mombasa v. Kala (1955) 22 E.A.C.A. 319-

Limits of Power: Procedural

Failure to observe procedural requirements:

Proceeding by an improperly constituted body:

- de Souza v. Tanga Town Council 1961 E.A. 377
- Mombasa v. Kala (1955) 22 E.A.C.A. 319
- Mwangi v. Tasker 1971 E.A. 385
- Gulamhussein v. Punja Lila 1959 E.A. 734.

Failure to observe rules of procedure:

- de Souza v. Tanga Town Council (Supra)
- Mombasa v. Kala (Supra)

- Donald Kilala v. Mwanza District Co. 1973 L.R.T. 19
- Agricultural & Horticultural Board v. Kent [1970]2 Q.B. 19; (1970)1 All E.R. 304
- Vale of Glamorgan B.C. v. Palmer (1982)81 L.G.B. 678
- London & Clydeside v. Aberdeen [1979] 3 All E.R. 876 [1980] 1 W.L.R. 182.
- Fatuma Awadh Said v. Salima Ati [1987] T.L.R. 156
- Obed Mtei v. Rukia Omari [1989] T.L.R. 111
- Sheffield c.c. v. Graingers [1978] 2 All E.R. 70; [1977]1 W.L.R. 1119

Defects of form:

- A.G. v. Lesinai Ndeani 1980 T.L.R. 214
- Re: Wilfred Ngonyani 1982 T.L.R. 272.

Limits of Powers:

- A.G. v. Fulham Corporation [1921]1 Ch. 440
- Bromley London B.C. v. GLC [1982]1 All E.R. 129; [1981]1 A.C. 768
- Samwel Kubeja v.R 1981 T.L.R. 72
- Amri Juma v THA, H.C. (Dar) Misc. Civil 37/1980
- Sheikh Muhammad Nassor Abdulla v. the RPC 7 & Others. 1985 T.L.R. 1
- Juma Yusuph v. Minister of Home Affairs, 1990 T.L.R. 80

Revisit the readings on Subsidiary Legislation and on Acquisition and Exercise of Power (Supra)

Improper Exercise of Power

Failure to Exercise Jurisdiction

Revisit Readings on Abdication & Unauthorised assumption of power, and Acting under Dictation

- R.v. Stepney Corporation [1970]1 W.L.R. 1231; [1970] 3 All E.R. 871
- Lavender v. Minister of Housing [1970]1 W.L.R. 1231; [1970] 3 All E.R. 871
- R.v. Torquay Licencing [1951] 2 K.B. 784
- Westminster Corpn. V. London & NW Ry 1905 A.C. 426.

Fettering own Discretion/Jurisdiction by self imposed rules of policy.

- Lavender v. Minister of Housing (supra)
- R.v. London County Council [1918] 1 K.B. 68
- R.v. Port of London [1919] 1 K.B 176
- Singh v. Municipal Council of Nairobi (1946)22 (1) K.L.R. 8
- Sheikh Brothers v. Control of Motels Authority (1949) 23(2) K.L.R. 1
- British Oxygen Co. Ltd. V. Minister of Technology [1970]3 All E.R. 165; 1971; A.C. 610.

By Contractual commitment or undertaking:

- Strenger v. Minister of Housing [1970] 1 W.L.R. 1281
- Dowty Boulton Paul Ltd v. Wolverhampton Corporation [1971] 1 W.L.R. 204; [1971] 2 All E.R. 277

- Also see cases in: [1973] Ch.94; [1973]2 W.L.R. 618 and 2 All E.R. 491.
- Also note that public power lawfully vested cannot be restricted or fettered by contract or by estoppel: revisit readings on “acquisition” and “loss of power”

Misuse and Abuse of Power

There is misuse when limits of power are not properly observed.

- Revisit readings on “Limits of Powers”

But note: the “fairly incidental” rule:

- AG v. Crayford UDC [1962] 2 All E.R. 147
- AG. V. Independent Broadcasting Authority [1973] Q.B. 629

But the rule should not conflict with law or be applied to breach a basic right

- Madhwa v. Nairobi City Council 1968 E.A. 406
- Njombe District Council v. Kanti Printing Works 1971 E.A. 193

Wrong or Irrelevant Consideration, improper purpose or motive

- Re: Mulchand Punja Shah 1958 E.A. 587
- Fernandes v. Kericho L.L.C. 1968 E.A. 640
- Re: Shah Vershi 1970 E.A. 631
- Re: Bukoba Gymkhana Club 1963 E.A. 478
- Roberts v. Hopwood [1925] A.C. 578
- Bromley London Borough Council v. Greater London Council [1983] 1 A.C. 789; [1982]1 All E.R. 129

- Westminster Corporation v. London & North Western Railway Company [1905] A.C. 426
- Shaban Khamis Mlool v. Superintendent of Prisons, 1991 T.L.R. 21.
- J.L. Kessy v. City Council of DSM, H.C.C.C. 299 of 1988

What are relevant considerations?

- Sharp v. Wakefield 1891 A.C. 173
- Amri Juma v. THA & Another [1998] T.L.R.
- Agro Industries Ltd. V. Attorney General [1994] T.L.R. 43
- James F. Gwagilo v. Attorney General [1994] T.L.R. 73

Unreasonableness/Acting on No Evidence/Leading to Absurdity:

Note that readings on “Unreasonableness” of subsidiary legislation are relevant:

- R.v. Hermitte (1938) 18 K.L.R. 55
- Kruse v. Johnson [1898] 2 Q.B. 91
- Kirkalady v. Limbe Town Council (1946) 13 E.A.C.A. 65.
- Nash v. Finlay (1901) 18 T.L.R. 92
- Arlidge v. Islington Corporation [1909] 2 K.B. 127
- Sparks v. Edward Ash Ltd [1994] 1 K.B.; [1943] 1 All E.R. 1
- Ashbridge Investments Ltd. V. Minister of Housing
[1965] 3 All E.R. [1965] 1 W.L.R. 1320

The following are useful on unreasonable Administrative actions:

- Associated Provincial Picture Houses v. Wednesbury Corporation [1947] 2 All E.R. 680; [1948] 1 K.B. 223
- Kenya Aluminium v. Minister for Agriculture 1961 E.A. 248
- Backhouse v. Lambeth LBC, The Times, London 14/10/1972

- Board of Education v. Rice [1911] A.C. 179
- Local Government Board v. Arlidge [1915] A.C. 120
- R v. Electricity Commissioner [1924] 1 K.B. 171, note especially the Atkin, dictum at p.205
- Franklin v. Minister of T & C. Planning [1948] AC 87; [1948]2 All E.R. 289
- Nakkuda Ali v. Jayaratne [1951] A.C. 66
- R.v. Metropolitan Police Commissioner [1953] 2 All E.R. 717; [1953] 1 W.L.R. 1150.

Then: Natural Justice applied to cover wider situations of administrative decision making where the rights of a subject are involved; widened to a “duty to act fairly”.

- Ridge v. Baldwin [1963] 2 All E.R. 66 [1964] A.C. 40
- Re: (H) K (an Infant) [1967] 2 Q.B. 617 [1967] 2 W.L.R. 962; [1967] 1 All All E.R. 226.
- Schmidt v. Secretary of State [1969]2 Ch. 149; [1969] 1 All E.R. 904
- R.v. Gaming Board [1970] 2 Q.B. 417; [1970]2 All E.R. 528
- R.v. Birmingham City Justices [1970]3 All E.R. 945
- Breen v. Amalgamated Engineering Union [1971]1 All E.R. 1148 [1971]2 Q.B. 175.
- Selvarajan v. Race Relations Board [1976] 1 All E.R. 12
- R.v. Commission for Racial Equality [1980] 3 All E.R. 265; [1980] 1 W.L.R. 1580.
- Bushell v. Secretary of State [1981] A.C. 75; [1980] 3 All E.R. 608
- Council of Civil Service Unions v. Minister for the Civil Service [1985] A.C. 374; [1984] 3 All E.R. 935

Application of the Rules in East Africa:

- Sheikh Brothers .v. Hotels Control Authority (1949) 23(2) K.L.R. 1
- Ndegwa v. Liquor Licencing Court 1957 E.A. 309.
- Re: Marles 1958 E.A. 153
- Murigan v. Transport Appeals Tribunal 1959 E.A. 1
- R.v. Road Transport Appeals Tribunal 1959 E.A. 449
- De Souza v. Tanga Town Council 1961 E.A. 377
- Donald Kilala v. Mwanza District Council 1973 L.R.T. 9
- Kibwana v. Kassim Mohamed 1974 L.R.T. 55
- Simeon Manyaki v. Institute of Finance Management, 1984 T.L.R. 304
- Jimmy David Ngonya v. NIC [1994] T.L.R. 28

The Rule Against Bias

- Dimes v. Grand Junction Canal (1852) 3 H.L.C. 759
- R.v. Hendon R.D.C. ex parte Chorley [1933] 2 K.B. 696
- Metropolitan Properties Co. v. Lennon [1968] 3 All E.R. 304; [1969]1 Q.B. 577.
- Rv. Sussex Justices [1924] 1 K.B. 256
- Ndegwa v. Nairobi Liquor Licencing Court 1957 E.A. 709
- R.v. Altrincham Justices [1975]2 W.L.R. 450
- Ndegwa v. Nairobi Liquor Licencing Court 1957 E.A. 709.
- R.v. Altrincham Justices [1975]2 W.L.R. 450.

Not necessarily participation in, but also mere presence at (the) decision making in the absence of the other party is enough to establish bias:

- Jimmy David Ngonya v. NIC [1994] T.L.R. 28

- Cooper v. Wilson [1937]2 K.B. 309; [1937] 2 All E.R. 726
- De Souza v. Tanga Town Council 1961 E.A. 377
- R v. Barnsley M.B.C., exp. Hook [1976]1 W.L.R. 1052; [1976]3 All E.R. 452.

Prejudice or preconceived opinion:

- Ndegwa v Nairobi Liquor Lincencing Court (supra)
- R.v. Kent Police Authority [1971] 2 Q.B. 662; [1971] 3 All E.R. 20.
- R.v. Sevenoaka District Council, ex parte Terry [1985] 3 All E.R. 226.
- Tanzania Air Servicies Ltd v. Minister for Labour & Two Others [1996] T.L.R. 217
- R.v. Frankland Prison Board Visitors, s [1986]1 All E.R. 272.

The Right to a Hearing

Where there is a “legitimate expectation”

- Cooper v Handsworth Board of Works (1863) 14 C.B.N.S. 80 (1863) E.R. 143
- Ridge v. Baldwin [1963]2 All E.R. 66 [1964] A.C. 40
- De Souza v Tanga Town Council 961 E.A. 377
- Donald Kilala v. Mwanza District Council 1973 L.R.t. 19
- R.v. Secretary of State for Environment [1982] Q.B. 808 [1982]1 All E.R. 737.
- Simeon Manyaki v. IFM [1984] T.L.R. 304

The “Legitimate expectation” must be of a right which is real, not speculative”. Contrast above cases with the following:

- Schmidt v. Secretary of State [1969] 1 All E.R. 904 [1969] 2 Ch. 149.
- Gaiman v. National Association for Mental Health [1970]2 All E.r. 362 [1971] Ch. 317

Note: In applications for licences, usually there is a right to a hearing before an application for renewal of a licence is refused; there is no such right upon refusal of an application for the first time. This, though, is always subject to statutory provisions. Thus see:

- Re: Bukoba Gymkhana Club 1963 E.A. 478
- Karimari Corner Bar v. Embu. Liquor Licensing Cour [1967] E.A.

Right to a Hearing may arise merely out of a public undertaking or promise:

- Re: Liverpool Taxi Fleet Owners Association [1972] 2 Q.B. 299 [1972]2 All F.R. 589.
- AG Hong Kong v. Ng Yuen Shin [1983] 2 A.C. 629 [1983] 2 Q.B. 299 [1972] 2 All F.r. 589.
- Council of Civil Service Unions v Minister for the civil Service [1984]3 All E.r. 935 [1985] A.C. 374

Rights to a Hearing means and includes sufficient Notice of the charge: thus there is a duty of disclosure:

- R.v. Mohamed Alli (1947)14 E.A.C.A. 126

- Colonial Boot Co. V.D. Bryranjee & Sons (1952) 19 E.A.C.A.
- Patel v. Plateau Licencing Court (1954) 27 K.L.R. 147
- Murigan & Sons v Transport Appeals Tribunal 1959 E.A. 1
- Cowasjee Dishaw & Bros v. Cowasjee Dishaw Employees Union 1963 E.A. 84
- De Souza v. Tanga Town Council 1961 E.A. 377
- Salehe Mohamburi v. Nosen Mrinda 1969 H.C.D. 276
- Beera v. Della Santa 1969 E.A. 210
- Donald Kilala v. Mwanza District Council 1973 L.R.T. 19
- Jimmy David Ngonya v. NIC [1994] T.L.R. 28

Sufficient Notice may imply sufficient time to prepare defense and even to occasion adjournment of hearing:

- R.v. South West London Supplementary Benefits Appeal Tribunal, exp parte Bullen (1976) 120 Sol. Jo 437
- Ostreicher v. Secretary of State for the Environment [1978] 1 W.L.R. 810 [1978]3 All E.R. 82
- R.v. Thames Magistrate's Court [1974] 1 W.L.R. 1371 [1974] 2 E.R. 1219.

Sufficient Notice implies sufficient disclosure for affected person to comprehend/appreciate fully the implication of the charge: additional charges if made, must be disclosed:

- Errington v. Minister of Health [1935] 1 K.B. 249
- De Souza v. Tanga Town Council 1961 E.A. 377
- Annamunthodo v. Oilfields Workers [1961] A.C. 945; [1961] 3 All E.R 621

Right to a Hearing, Adjudgments and Right to Representation:

- R.v. South West London Supplementary Benefit Appeals Tribunal, ex parte Bullen (1976) 120 Sol. Jo.437
- Ostreicher v. Secretary of State for Environment (1978] 1 W.L.R. 810 [1978] 3 All E.R. 82.
- R.v. Thames Magistrate's Court ex. P. Polemis [1974] 1 W.L.R. 1371 [1974]2 All E.r. 121
- Argha & Others v. Registrar of Trade Unions 1973 E.A. 297
- Arcado Ntagazwa v. Buyogera Bunyambo [1997] T.L.R. 242

Right to a Hearing: Evidence, Reasons and Records:

- Errington v. Minister of health [1935]1 K.B. 249
- De Souza v. Tanga Town Council 1961 E.A. 377
- R.v. Deputy Industrial Injuries Commissioner, ex. P, Jones [1962]2 Q.B. 677 [1962] 2 All E.R. 430
- R.v. Aston University [1969] 2 Q.B. 538 [1969] 2 All E.R. 964

Principles of Natural Justice: Where They May Not Apply:

Waiver:

- R.v. Mohamed Eman (1954) 21 (2) K.L.R. 47
- Sikabuza v. Director of Lands & Surveys 1960 E.A. 808
- McLas v. New Carlton Hotel Ltd 1970 E.A. 672

Also see: Mwangi v Tasker 1971 E.A. 385.

Disapplication by Statute, express or implied: eg. Tanzania Statutes:

- Land Ordinance Cap 113, s.10 (Presidential power to revoke)
- Land Acquisition Act, 1967 (No.47), s.34 (its effects)

- Local Government (District Authorities) Act, 1982 (No.7), ss.5 & 7
- Local Government (Urban Authorities) Act, 1982 (No.8), ss. 5 & 7

In the Legislative Process:

- Bates v Lord Hailsham [1972] 1 W.L.R. 1373 [1972] 3 All E.R. 1019

In Initiating Procedure

- Korwest Holst v. Secretary of State for Trade [1978] Ch.201 [1978]3 All E.R. 2

But contrast with:

- Selvarajan v. Race Relations Board [1976]1 All E.R. 12

Note: Not applicable to privileges (as opposed to rights) or where it would be contrary to public policy: R.v. Gaming Board [1970]2 All E.R. 528.

(c) ERROR OF LAW (ON THE FACE OF THE RECORD)

Error of Law as a Ground for Judicial Review:

- R.v. Northumberland Compensation Appeals Tribunal, ex. P. Shaw [1952] 1 K.B. 338 [1952]1 All E.R. 122
- R.v. Minister of Housing & Local Government [1960]1 W.L.R. [1960]2 All E.R. 4
- R.v. Medical Appeals Tribunal, ex p. Gilmore [1957] 1 All E.R. [1957]1 Q.B. 574
- Anisminic Ltd v. Foreign Compensation Commission [1969]1 All E.R. 208 [1969] 2 A.C. 147
- Re: Hirji Transport Ltd 1961 E.A. 88
- Amri Juma & Others v. THA & Another: HC-DSM, Misc. Civil Cause No. 37/1980
- Ally Linus and Other v. THA [1998] T.L.R. 1

What Constitutes record?

- R.v. Medical Appeals Tribunal, ex. P. Gilmore (Supra)
- Baldwin & Francis Ltd v. Patents Appeals Tribunal [1959] A.C. 663 [1959] 2 All E.R. 433.
- R.v. Chertse Justices, ex parte Franks [1961] 1 All E.R. 825 [1961]2 Q.B. 152
- Re: Hirji Transport Ltd. 1961 E.A. 88
- R.v. Patents Appeals Tribunal, ex parte Swift [1962] 1 All E.R. 610 [1962] 2 Q.B. 647
- R.v. Supplementary Benefits Commission, ex parte Singer [1973] 1 W.L.R. 13; [1973]2 All E.R. 931
- R.v. Greater Birmingham, ex parte Khan [1979] 3 All E.R. 759.

- R.v. Crown Court, ex parte ISC (London) Ltd. [1981]3 All E.R. 417

Also see casenotes in 77 Law Quarterly Review p. 157 and p.322.

(d) REMEDIES

Some General Readings

- Yardley, "The Ground for Certiorari and Prohibition", (1959) 37 Canadian Bar Review 294
- Yardley, "Certiorari and the problem of Locus Standi," (1955)71 Law Quarterly Review 388
- Yardley, "Prohibition, Mandamus and the Problem of Locus Standi", (1957) 73Law Quarterly Review 534
- Titzgerald, "Certiorari: Errors of Law on the Face of the Record," (1964) 4 Melbourne Law Review 552
- Thio, "Locus Standi in Relation to mandamus", (1966) Public Law 133
- Garner, "Locus Standi in Actions for a Declaration, (1968) 31 Modern Law Review, 512.
- Borrie, "The Advantage of the Declaratory Judgment in Administrative Law," (1955) 18 Modern Law Review, 138.
- De Smith, "The province of Declaratory Judgment Redetermined", (1958) 21 Modern Law Review, 404

PREROGATIVE ORDERS

Important Note: Judicial review should be contrasted with Appeal.

- R.v. Northumberland Compensation Appeals Tribunal [1952] 1 K.B. 388

- Northern TZ Farmers Coop Society v. W.H. Shellukindo 1978 L.R.T. No.36 & 37
- Sanai Murumbe & Another v Muhere Chacha, [1990] T.L.r. 54
- Ally Linus and Others v. THA [1998] T.L.R.1

Some cases on the Procedure:

- R.v. Electricity Commissioner [1924]1 K.B. 171
- Re: ex Parte Corbett Ltd (1955) 28 K.L.R. 137
- DMT v. Transport Licencing Authority 1959 E.A. 403
- Farmers Bus Service v. Transport Licencing Appeals tribunal 1959 E.A. 779.
- Re: Gidean Wawere Gathunguri 1962 E.A. 52
- Masaka D.G.C. Union v. Mumpiwakoma Coop. Society 1968 E.A. 680
- Uganda Electricity Board v. Electricity Board Workers Union 1974 E.A. 203
- Northern TZ Farmers Coop Society v. W.H. Shellukindo 1978 L.R.T. 36
- Re: Fazal Kassam (Mills) Ltd. 1960 E.A. 1002
- DC Kiambu vR and Others, Ex. P. Njau E.A. 109
- Timothy H.M. Mwakilasa v. P.S. (Treasury) 1978 L.R.T.38
- Mwanza Restaurant and Catering Association v. Mwanza Municipal Director; HC-MZA., Misc. Civil Cause No. 3/1987

CERTIORARI

Jurisdiction of the High Court – Inherent:

- R v. Local Government Board (1882) 10 Q.B.D. 309 (321)

- Walsall Overseers v. London & North Western Ry. (1887)4 App. Cas.30
- R.v. Electricity commissioners [1924] 1 K.B. 171 (pp 193) & 204)
- R.v. London County Council, ex parte E.P.A. Ltd [1931] 2 K.B. 215 (233).
- Reccourse Betting Control Board v. Secretary of State [1944]1 E.R. 60.
- R.v. Northumberland Comp. Appeals Tribunal [1951] 1 All E.R. 268; [1962]1 K.B., 388.
- Re: Nagindas Himabhai Desai [1954]2 T.L.R. @ 192
- DMT v. Transport Licencing 1959 E.A. 403
- Re: Hirji Transport Service 1961 E.A. 88
- De Souza v. Tanga Town Council 1961 E.A. 377
- Re: Bukoba Gymkhana Club 1963 E.A. 478
- Mapunda v. The Manager E.A.A. 1970 H.C.D. 24
- Congreve v Home Office [1976] Q.B. 629.
- Northern TZ Farmers Coop Society v w.H. Shellukindo 1978 L.R.T. 36, 37.
- Abdi Athuman & Others v DC Tundurus & Others, H/C Mtwara, Misc. Civil 2 & 3 of 1987.
- R.v. Metropolitan Police commissioner, ex p. Paarker [1953] 2 all E.R. 717
- Festo Balegele and Others v. DSM City Council

Classification of functions between judicial (or quasi-judicial) functions and administrative (or executive) functions, and the “duty to act judicially”

- R.v. Electricity commissioners [1924]1 K.B. 171
- R.v. Legislative Assembly of the church [1928] 1 K.B. 411
- General Medical Council v. Spackman [1943] A.C. 627
- R.v. Postmaster General [1928] 1 K.B. 291.

- Mwanza Restaurant and Catering Association v. Mwanza Municipal Director, HC-MZA, Misc. Civil Cause No. 3/1987
- R.v. Boycott, ex p. Keasley [1939] 2 K.B. 651; [1939] 2 All E.R. 626
- R.v. Paddington Valuation Officer [1965] 2 All E.r. 836; [1966] 1 Q.B. 380.

Classification of functions not accepted/supported or not emphasized.

- Local Government Board v. Arlidge [1915] A.c. 120 (140);
- The King v. Heron RDC, ex p. Chorley [1932]2 K.B. 696
- The King v. London C.C., ex. P. EPA Ltd. [1931] 2 K.B. 215
- Ridge v. Baldwin [1964] a.C. 40; [1963]2 All E.R. 66
- Re: H.K. (An Infant) [1967]2 Q.B. 617: [1967]1 All E.R. 226
- R.v. Criminal Injuries Compensation Board [1967] 2 Q.B. 864 [1967] 2 All E.R. 770
- Padfield v. Minister of Agriculture [1968] 2 Ch. 149
- R.v. Gaming Board, ex parte Benaim [1970] 2 Q.B. 417
- Patman Garments v. Tanzania Manufacturers 1981 T.L.R. 303
- O' Reilly v. Mackmann [1982] 3 All E.R. 1124[1983] 2 A.C. 237.
- Agro Industries v. Attorney General [1994] T.L.R. 43
- James F. Gwagilo v. Attorney General [1994] T.L.R. 73.

Grounds for Award of Certiorari:

- Ultra Vires Doctrine
- Error of Law on the Face of the Record
- Breach of Principles of Natural Justice

Certiorari is Discretionary; therefore may not issue where:

(1) There is Alternative Remedy

- R.v. Paddington [1965] 2 All E.R. 836; [1965]3 W.L.R. 426; [1966]1 Q.B. 380.
- R.v. Hillingdon LBC, ex p. Royco [1974] Q.B. 720; [1974]2 W.L.R. 805; [1974]2 All E.R. 643.
- Moris Onyango v. Senior Investigation Officer [1980] T.L.R. 150.
- John Mwombeki v. R.C. and R.P.C. Bukoba [1986] T.L.R. 73. But not a hard & fast rule;
- Amri Juma v. THA & Another: HC-DSM, Misc. Civil Cause No.37/980.

And will readily issue where alternative is not practical:

- R.v. Chief Immigration Officer [1980] All E.R. 373; [1980]1 W.L.R.1396
- Tropex Ltd v. Commissioner of Income Tax: [1996] T.L.R. 290

(2) The Applicant is Somehow to blame (e.g. unreasonable delay)

- R.v. Stafford [1940] 2 K.B. 33
- Re: ex parte Fry [1954] 1 W.L.R. 730
- Walker v. Leeds City Council [1976] 3 All E.r. 709
- R.v. Secretary of State, ex. P. Birmingham DC [1984] Times, 14th July.

(3) The Effect may not be practically useful or may have undesirable consequences.

- R.v. Stafford Justices [1940] 2 K.B. 23
- R.v. Brent Health Authority, ex. P. Francis [1984]3 W.L.R. 1317; [1985] 1 All E.R. 74

- Conrad Berege v. Registrar of Coops & Others H.C. DSM. Misc. Civil Cause No.35 of 1990 now in. [1998] T.L.R.
- R.v. Gaming Board [1970] 2 All E.R. 528

(4) Application seeks to protect a privilege (not a right):

- R.v. Gaming Board [1970] 2 All E.R. 528

(5) Applicant has no Locus Standi

- R.v. Thames Magistrates Court, ex p. Greenbaum (1957/55 L.G.R. 129
- R.v. Liverpool Corporation [1972] 2 Q.B. 299 [1972] 2 All E.R. 589
- R.v. GLC, ex parte Blackburn [1976] 1 W.L.R. 550; [1976] 3 All E.R. 184
- Festo Balegele & Others v. DSM City Council, H.C. Misc. Civil No. 90/1991
- Lujuna Shubi Ballonzi, snr. V. Registered Trustees of CCM [1996] T.L.R. 203
- Rev. Christopher Mtikila v. Attirbet General [1995] T.L.R. 31

PROHIBITION

- R.v. Electricity Commissioners [1924] 1 K.B. 171
- R.v. North, exp parte Oakey [1927] 1 K.B. 491
- The King v. Minister of Health, ex parte Davis [1925] 1 K.B. 619
- Estate & Trust Agencies v. Singapore Improvement Trust [1937] A.C. 898.
- R.v. Tottenham & District Tribunal [1957] 1 Q.b. 103
- R.v. Kent Police Authority, ex parte Golden [1971] 2 Q.B. 662; [1971]3 All E.R. 20

- R.v. Liverpool Corpn, ex p. TFOA [1972] 2 Q.B. 299; [1972] 2 All E.R. 509
- R.v. Greater London Council, ex p. Blackburn [1976] 1 W.L.R. 550 ; [1976]3 All E.R. 184
- R.v. Boundary commission, ex parte Foot [1983] Q.B. 600
- AG (Hong Kong) v. Ng Yuen Shiu [1983] 2 A.C. 629; [1987] 2 All E.R. 346.
- Festo Balegele & Others v. DSM City Council, H.C. DSM, Misc. Civil Cause No.90 of 1991 (unreported)
- Thomas v. University of Bradford [1987] A.C. 795
- R.v. Judicial Committee of the Privy Council, ex p. Vijayatunga [1988] 2 W.L.R. 106
- Dorman Tanzania Ltd v. Commissioner of Income Tax; HC-DSM, Misc. Civil Cause No.52/1998.(unreported)

MANDAMUS

- Julius v Lord Bishop of Oxford (1880)5 App. Cas.214
- R.v. London Country Council [1918] 1 K.B. 68
- R.v. Port of London Authority [1919] 1 K.B. 176
- British Oxygen v. Minister of Technology [1970] 3 All E.R. 165; [1971] A.C. 610
- Re: Mohamed Aslam Khan Shah v. Attorney General (No.3) [1970] E.A. 543.
- Yusufu Mutenda v. Zakaliya 1957 E.A. 391

- D.C. of Kiambu v.R. 1960 E.A. 109
- Re: Fazal Khassam (Mills) Ltd 1960 E.A. 1003
- R.v. Special Commissioner for Income Tax (1888) 21 Q.B.D. 313
- The King v. Dunsheath, ex parte Meredith [1915] 1 K.b. 127
- Alfred Lekaru v. Town Director, Arusha [1980] T.L.R. 326.
- Amri Juma v. THA: HC-DSM, Misc. Civil Cause No.37/1980.
- Tanzania Air Services Ltd. V. Minister for Labour & Two Others [1966] T.L.R.

TANZANIA

Mandamus is a discretionary remedy:

- Refer to the two last mentioned cases (supra)
- Pasmore v. Oswaldtwistle UDO [1898] A.C. 387
- Southwark v. Williams [1971] Ch 734;[1971] 2 All E.R. 175
- R.v. Stepney Corporation [1902] 1 K.B. 317
- R.v. City of London [1907] 2 K.B. 764
- R.v. Port of London, ex. P. Kynoch [1919] 1 K.B. 176
- R.v. Bedwellty UDC, ex parte Price [1934] 1 K.B. 333
- R.v. Paddington Valuation Officer [1966] 1 Q.B. 380; [1965] 2 All E.R. 836.

- R.v. Bristol Corpn. Exp. Hendy [1974] 1 All E.R. 1047; [1974]1 W.L.R. 498

- R.v. Kerrier DC (1976) 32 P & CR 411.

- Moris Onyango v. Senior Investigation Officer [1980] T.L.R. 150.

- John Mwombeki v. R.C. & RPC Bukoba [1986] T.L.R. 73

Some Applications (or uses) of Mandamus:

- R.v. St. Pancras Vestry (1890) 24 Q.B.D. 371
- R.v. Tynemouth Rural District Council [1896] 2 Q.B. 219
- R.v. Leigh [1897] 1 Q.B. 132
- Board of Education v. Rice [1911] A.C. 179
- R.v. Barnes Borough Council, ex p. Conlan [1938] 3 All E.R. 226
- R.v. Pugh (Judge) [1951] 2 K.B. 623
- R.v. Board of Trade [1965] 1 Q.B. 603.
- Padfield v. Minister of Agriculture [1968] A.C. 997
- R.v. Tower Hamlets L.B.C. [1975] Q.B. 431
- R.v. Home Secretary, ex parte Phansopkar [1976] Q.B. 606
- R.v. Home Secretary, ex parte Herbage (No.2) [1987] Q.B. 107

Consequences of Disobedience:

- R.v. Poplar Borough Council (No.2) [1922] 1 K.B. 95

Also see some useful articles by:

Wade, in (1969) 85 Law Quarterly Review 468

in (1974) 90 Law Quarterly Review 157

J.F. Garner, in (1974) 90 Law Quarterly Review 6

J.W. Bridge, in (1970) Law Quarterly Review 531

ORDINARY REMEDIES

INJUNCTION

- A.G. v. Fulham Corporation [1921] 1 Ch. 440
- A.G. v. Harris [1920] 3 All E.R. 207 [1921] 1 Q.B.
- A.G. v. Bastow [1957] 1 All E.R. 497 [1957] 1 Q.B. 514
- A.g. (Engham UDC) v. Smith [1958] 2 Q.B. 173; [1958] 2 All E.r. 557
- A.G. v. Chaudry [1971] 1 W.L.R. 1614; [197] 3 All E.R. 938
- Gouriet v. Union of Post Office Workers [1978] A.C. 435; [1977] 3 All E.R.

Interlocutory Injunctions:

- American Cynamaid Co. v. Ethieon Ltd [1975] A.C. 396; (1975) 1 All E.R. 504
- Garden Cotton Food v. Milk Marketing Board [1983] All E.R. 770; [1984] A.C. 130.
- V.D. Chavda v. Director of Immigration Services [1995] T.L.R.
- Hans Wolfgang Golcher v. G.M. [1987] T.L.R. 78.

East African Cases:

- Commissioner of Lands v. Khalfan (1923) K.L.R. 120
- Chief Catonga v. Stephen Kinyanjui 1959 E.A. 1096
- AG of Kenya v. Block 1959 E.A. 180
- Commissioner of Income Tax v. Irish Electrical Co. 1969 E.A. 58
- Mafalinga & Others v. AG 1972 E.A.518

DECLARATION

- Barraclough v. Brown [1897] A.C. 615
- Ellis v. Duke of Bedford [1899] 1 Ch. 494
- Dyson v. Attorney General [1911] 1 K.B. 410; [1912]1 Ch.158
- Bernard v. National Dock Labour Board [1953] 1 All E.R. 1113; [1953]2 Q.B. 18
- AG v. Colchester Corporation [1955] 2 Q.B. 207; [1955]2 E.R. 124
- Central Electricity Generating Board v. Jenaway [1959] 1 W.L.R. 937 ; [1959]3 All E.R. 409
- Pyx Granite v. Minister of Housing [1959] 3 All E.R. 1; [1960] A.C. 260
- Fawcett v. Buckingham c.c. [1960] 3 All E.R. 503; [1961] A.C. 636
- Argosam Finance Co. v. Oxby [1964] 3 All E.R. 561; [1965] Ch. 390.
- Chertsey UDC v. Maximam [1964] 2 All E.R. 627; [1965] A.C. 735
- Blackburn v. Attorney General [1971]1 E.L.R. 1037
- Ealing London B.C. v. Race Relations Board [1972] AC 342; [1972] 1 All E.R. 105
- Congreve v. Home Office [1976] Q.B. 629; [1976] 1 All E.R. 697.
- Malone v. Metropolitan Police Commissioner [1979] Ch. 344; [1979]2 All E.R. 620.
- Williams v. Home Office (No.2) [1981] 1 All E.R. 1211
- Shah v. Barnet London B.C. [1983] 1 All E.R. 226; [1983]2 A.C. 309
- Registrar of Buildings v. Eliniiria Patton Mwashha [1982] T.L.R. 242.

- Dar es Salaam Young African S.C. v. Registrar of Sports Associations and Two Others [1982] T.L.R. 278.

SOME PROBLEMS OF JUDICIAL REVIEW REMEDIES

Remedial Solutions are not Comprehensive

- Compare & Contrast Review with Appeal
- Remedies lack Coherence: each must be pleaded specifically
- R.v. Liverpool Corpn. [1972] 2 Q.B. 299; [1972] 2 All E.R. 509
- R.v. GLC, ex parte Blackburn [1976] 1 W.L.R. 550; [1976] 3 All E.R. 184
- AG Hong Kong v. Ng Yuen Shiu [1983] 2 A.C. 629; [1983] 2 All E.R. 346

Remedies are Discretionary: not available as of right

- Revisit Cases on “Certiorari is a Discretionary Remedy
- Conrad Berege & Others v. Registrar of Cooperatives (supra), [1998] T.L.R.

The Problem of Locus Standi:

- R.v. Thames Magistrates Court, or exp. Greenbaum (1957) 55 L.G.R. 129.
- R.v. Liverpool Corpn. [1972] 2 Q.B. 299; [1972] 2 All E.R. 509

- R.v. GLC, ex parte Blackburn [1976]1 W.L.R. 550; [1976]3 E.R. 184
- Convent Garden Comm. Assoc. Ltd. V. G.L.C. [1981] J.P.L. 183
- R.v. Chief Adjudication Officer, ex p. Bland (1985) Times, 6 February.

The Two-Stage Procedure:

- Alfred Lekar v. Town Director [1980] T.L.R. 326
- DMT Transport Licensing Authority [1959] E.A. 403
- Farmers Bus Service v. Transport Licensing Appeals [1959] E.a. 779
- Timothy H.M. Mwakilasa v. PS (Treasury) 1978 L.R.T. 38.

EXCLUSION OF JUDICIAL REVIEW

De Smith, Chapter 7

Yardley, D.C.M. A Source book of English Administrative Law, Butterworths, London, 1963

Wade, H.W.R. Administrative Law, Oxford Clarendon Press,

Wani, A.A. Exclusion of Judicial Review, Matropolitan Book Co., New Delhi, 1987

(a) Exclusion of Judicial Review by giving administrative action the force and status of principal legislation

“..... as if enacted in this Act” or “..... As if contained in this Act”

- Minister of Health v. Ex Parte yaffe [1931] A.C. 494
- S.40 of the Housing Act, 1925 (E)
- Institute of Patent Agents and Others v. Joseph Loekwood [1894] A.C.
- S.101 (3) of the Patents, Designs and trade ark Act, 1884 (E)

TANZANIAN STATUTES WHERE THIS TECHNIQUE HAS BEEN USED:

- Transfer and Delegation of Powers Act 1962 S. (3)
- Professional Surveyors (Registration) Act 1977 S.28
- Ministers (Misc. Provisions) Act. 1962 s.5(2)

(b) FINALITY CLAUSES:

Clauses purporting to oust court's jurisdiction to control administrative action and purporting to make administrative authorities final in their discharge of executive powers and discretion.

(i) “_____ final and conclusive and shall not be subject to review in any court”

- Tanzania News Agency Act, 1974, 1974s. 7 (4)

(ii) “_____ not to be questioned in any legal proceedings on any ground whatsoever”

- Private Hospitals Act 1977 s.14

(iii) “_____ shall be final and conclusive and shall not be subject to review, by any court or person in any capacity”

- Economic Sabotage (Special Provisions) Act, 1983 (Repealed) s.20

(iv) “_____ shall not be inquired into in any court.”

- civil Service Act, 1989, s.27(1)
- Preventive Detention Act, 1962 s.3
- Permanent Labour Tribunal Act, 1977 s.9B
- Transport Licensing ordinance. Cap 374
- Sales Tax Act. 2 47
- Regulations of Prices Act s.15
- Business Licensing Act, 1972 s.25
- Motor Vehicles (Registration and Acquisition of Disposition) Act 1972 s.25.

(c) COURTS ATTITUDE

(a) Presumption against exclusion of the jurisdiction of the courts:

- R.v. Plowright [1986]3 Mod. 95
- R.v. Cheltenham Commissioners [1948] QB 467
- Lee v. Showmen’s Guild of Great Britain [1952] 2 Q.B. 329
- R.v. Medical Appeal Tribunal Ex Parte Gilmore [1957] 329 1 Q.B.574.
- Baron v. Sunder land corporation [1966] 2 Q.B. 56
- Failing LIB C.V. Race Relations Board [1972] AC 342
- Re: An Application by Hirji Transport Services (1961) E.A. 88
- Francis v. Viewley and West Drayton [1957]2 A.C. 148
- Tanganyika Electric Suuply Co. Ltd v. Ahmed Omar 1965) E.A. 30
- Coldsack v. Shore [1950] 1 K.B. 708
- Benmett & White (Galgary) Ltd v. Municipal
- Customs and Excise commissioner v. Cure and Deeley ltd [1962] 1 Q.B. 340.

- Chester v. Bateson [1920] 1 KB

- Re Bachand v. Du Puis [1946] 2 DLR 641

- Barker_v. Jones [1954] 1 W.L.R.

- Leigh v. National Union of Railwaymen [1970] Ch. 712

- Amisminic Ltd. V. Foreign Comp. Commission [1969] A.C. 147.

- James Gwagilo’s Case [1994] T.L.R. 73

- Mtenga v. University of Dar es Salaam [1971] H.C.D. 247

- Mwanza Restaurant Case

Direct Exclusion of Review

Fenwick v. Croydon Union Rural Sanitary Authority (1891) 2 QB 216
Attorney-general v Hanol UD (1900) 1 Ch. 51
St. Lucia Usines Co. v. Colonial Treasurer (1924) A.C. 508
Gates Union Guardians v. Durham C.C. (1918) 1 Ch. 146
Gillow v. Durham C.C. (1913) A.C. 54

“No Certiorari” clause

R v. Cheltenham Commissioners (1814) 1 QB 467

R v. Hurst exp. Smith (1960) QB 133.
R v. Worthington exp. Madan (1959)2 QB 145.

Conclusive Evidence Clause

Minister of Health v.R. exp. Yaffe (1931) A.C. 131
Reddamay v. Lanes C.C. (1925) 41 TLR 422.

Exclusion by General but comprehensive Clauses

R.v. Leman St. Police Station Inspector exp. Venicoff (1920)3 KB 72
R.v. Brixton Prison Governor exp. Soblon (1963) 2 QB 243
Schmidt v. Secretary of State for Home Affairs (1969) 2 QB 243.

Re An Application by Naginda Desai (1954) 2 TLR ® 192
In the Matter of an Application for a Writ of Mandamus (1954) 2 TLR 205
Re Marles Application (1958) E.A. 153
Anisminic v. FCC [1969] 2 A.C. 147; [1969] 1 All E.R. 208
In re Petition by Habel Kasenha (1967) E.A. 445.

Subjective Discretion Clause

Legislature may grant the executive wide discretionary powers which may prevent or have the effect of excluding judicial review. Some of the clauses used are as follows:

(a) “Where it is shown to the satisfaction of the President

.....

- The preventive Detention Act 1962 s.2(1) (a) where the president is satisfied that preventive Detention Act 1962 .

Cases

1. Liversige v. Anderson [1942] A.C. 206
2. Uganda v. Commissioner of Prisons, Ex parte Matovu [1966] E.A. 514
3. Mac Eldowney v. Forde [1969] 2 All ER 103
4. Attorney General v. Lesinoi and 3 others: [1980] T.L.R. 214
5. Sheik Mohamed Nassoro Abdulla v. the Regional Police Commander and 2 others [1985] T.L.R. 1
6. (a) Ali Yusufu Mrope v.R. H.c. at DSM, Misc. Cr. Cause No.2 of 983 (unreported).
7. Hanif Ali Ladak v. Regional Prisons Officer [1981] T.L.R. 68

Some Effect of Exclusion:

- Sanai Murumba 7 Another v. Muhere Chacha [1990] T.L.R. 54

(b)..... if the Minister has reasonable cause to believe”

- Nakkuda Ali v. Jayaratne [1951] AC 76-77
- Gendeno v. C’ Brien [1964-65] 7 West Indian Law Reports p. 192.

SUITS AGAINST THE GOVERNMENT

- Amphitheatre v. The King [1921] 3 K.B. 500
- Noble v. AG of E.A. Protectorate (1913) 5 E.A. P.L.R. 24
- Thabit Ngaka v. the Regional Fisheries Officer 1973 L.R.T. 24.

Government Liability for Torts:

- Muwonge v. Ag. Of Uganda 1967 E.a. 17
- Katikiro of Buganda v. AG of Uganda 1959 E.A. 382
- West Nile British Administration v. Dritto 1966 E.A. 324
- Bishop v. AG of Uganda 1967 E.A. 295
- A. Bauman & Co. v. Ndiope 1968 E.A 706
- Kiwani v. Attorney General 1969 E.A. 29
- Opoloto v. Attorney General 1969 E.A. 496

Procedural Formalities:

- Kigonya v. Attorney General of Uganda 1966 E.A. 463
- Kihumika v. Kagwa 1974 E.A. 297
- Attorney General v. Oluoch 1972 E.A. 392
- Odhimbo v. Otieno and Another 1974 E.A. 116
- Northern TZ Farmers Coop. Society v. W.R. Shellukindo 1978 LRT 36
- Njile Maheda v. Mbalagane Village Council & the AG. H.C. at Tabora, Civil Case no.14 of 1986. (Hand-out).

State Privelege:

- Mohanara v. Dass (1941) 19 (2) K.L.R. 67
- Denean v. Cammel Lair 7 Co. [1942] A.C. 642
- Paicura v. Sonahi 1967 E.A. 624.
- Njile Maheda v. Mbalagane V.C. and the A.g. (Supra)
- Peter Ng’omango v. Gerson Mwangwa [1993] T.L.R.77
- Kukutia Ole Pumbun v. Attorney General [1993] T.L.R. 159

JTM/ka:

**UNIVERSITY OF DAR ES SALAAM
FACULTY OF LAW
DEPARTMENT OF INTERNATIONAL LAW**

**2000/2001
SEMESTER I***

**TENTATIVE SCHEDULE OF LECTURES
LW 201**

LECTURE 1:

LECTURE 1: INTRODUCTION

- The Department (Location, Head, Staff)
- Mode of Instruction
- Continuous Assessment
- Extra-Curricular (Academic) Activities organised by the Department (Conferences, Seminars, Workshops, Publications, Talks,)
- Career and Professional Prospects open to a student of LW 201
- Peculiarities of Public International Law as a Legal Discipline

LECTURE 2: NATURE, ORIGIN AND DEVELOPMENT OF INTERNATIONAL LAW

- Schools of Thought on the origins of International Law
- Definitions of International Law
- Is International Law really Law?
- Landmarks in the evolution of International Law
- International Law and Africa

LECTURE 3: SOURCES OF INTERNATIONAL LAW

- Concept of “sources”
- Statute of the ICJ (Article 38(1))
- Treaties
- Custom
- General Principles
- Judicial Decisions and Writings of Experts
- *Jus cogens*
- ‘Soft Law’

LECTURE 4: SUBJECTS OF INTERNATIONAL LAW

- International Legal Personality/Capacity
- Primary and Secondary Subjects

- Statehood in International Law
- States
- Holy See
- Insurgents and Belligerents
- International Organisations (International Governmental Organisations)
- The Individual in International Law

LECTURE 5: JURISDICTION

- Concept and Practical Implications
- Territorial
- Nationality
- Protective
- Universality
- Extradition

LECTURE 6: INTERFACE BETWEEN INTERNATIONAL LAW AND MUNICIPAL LAW

- *Monism*
- *Dualism*
- Incorporation
- Transformation
- Self-Executing Treaties
- The Law and Practice in Tanzania

LECTURE 7: LAW OF TREATIES

- Terminologies (Convention, Charter, Covenant, Protocol, Pact, Treaty)
- Vienna Convention on the Law of Treaties, 1969
- The term “treaty”
- Treaty-Making Process
- Form
- Full Powers
- Consent to be Bound by a Treaty
- Reservations
- Entry into Force
- Valid Treaty

LECTURE 8: STATE RESPONSIBILITY

- ILC Draft Articles on State Responsibility
- Attributability/Imputability
- Objective Responsibility

- Subjective Responsibility or the Fault/*Culpa* doctrine
- The Status of Aliens

LECTURE 9: **DIPLOMATIC LAW**

- Vienna Convention on Diplomatic Relations, 1961
- Types of Diplomatic Missions and Ranks
- Members of Staff of the Mission
- Establishment of the Diplomatic Mission
- *Agreement, Persona non grata and Not Acceptable*
- Rights and Duties of the Receiving and the Sending States
- Diplomatic Immunities and Privileges
- Diplomatic Pouch
- Diplomatic and Consular Immunities and Privileges Act (Tanzania), 1986

LECTURE 10: **THREAT OR USE OF FORCE BY STATES**

- Declaration of Principles of International Law, 1970
- United Nations Charter
 - Article 2(4)
 - Article 51
 - Chapter VII
- Experience of the Security Council

LECTURE 11: **PEACEFUL/PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES**

- Declaration of the Principles of International Law, 1970
- United Nations Charter
 - Article 2(3)
 - Article 33
 - Article 52
- Dispute Settlement Mechanisms (Diplomatic, Judicial, Regional Arrangements)
- The International Court of Justice
- Arbitration

LECTURE 12: **LAW OF THE SEA**

- Evolution of the Law of the Sea
- UNCLOS I (First UN Conference of the Law of The Sea)
- UNCLOS II
- UNCLOS III
- United Nations Convention on the Law of the Sea, 1982 (UNCLOS)

- Principle Concepts and Codification
 - Territorial Sea
 - Contiguous Zone
 - Exclusive Economic Zone (EEZ)
 - Continental Shelf
 - High Seas
- Conservation and Management of Natural Resources
- The Practice and Law in Tanzania

LECTURE 13: **WRAP-UP**

**DEPARTMENT OF INTERNATIONAL LAW
FACULTY OF LAW**

**READING LIST
LW 201**

**LECTURE 2: NATURE, ORIGIN AND DEVELOPMENT OF INTERNATIONAL
LAW**

BOOKS*

ANAND, R.P., International Law and Developing Countries: Confrontation or Cooperation?, Martinus Nijhoff Publishers, 1987.

BERNHARDT, R. (ed), Encyclopedia of Public International Law, Vol. II, North-Holland, 1995, pp. 716-816 especially p. 849 *et seq.*

BROWNLIE, I., Principles of Public International Law (4th ed), Oxford University Press, 1990.

DUGARD, J., International Law: A South African Perspective, Juta, 1994.

HARRIS, D.J., Cases and Material on International Law (4th ed), Sweet & Maxwell, 1991.

JACKSON, J., Introduction to African Civilizations, 1970. Introduction, Ch. 2, 4.

KAPOOR, S.K., A Textbook of International Law (5th ed), Central Law Agency, 1982.

LLYOD OF HAMPSTEAD and FREEMAN, M.D., Llyod's Introduction to Jurisprudence (5th ed), ELBS, 1986, pp. 52-64, 115-123.

MALANCZUK, P., Akehurst's Modern Introduction to International Law (7th revised ed), Routledge, 1997.

MOKHTAR, G. (ed), General History of Africa (Abridged ed) Vol. II. Ancient Civilisations, of Africa, UNESCO, 1990, Ch. 1, especially at p. 21.

PICTET, J., Development and principles of International Humanitarian Law, Martinus Nijhoff Publishers, 1985.

SHAW, M.N., International Law (3rd ed), Grotius Publications Ltd., 1991, Ch. 1, Ch. 2.

SMITH, R.S., Warfare & Diplomacy in Pre-Colonial West Africa (2nd ed), 1989, Ch. 2, 8.

STARKE, J.G., Introduction to International Law (10th ed), Butterworths, 1989.

TUNKIN, I. (ed), International Law: A Textbook, Progress Publishers, 1986.

* The student is advised to ensure the book used is the most recent edition.

**DEPARTMENT OF INTERNATIONAL LAW
LW 201**

LECTURE 3: SOURCES OF INTERNATIONAL LAW

READINGS

BOOKS

- **BROWNLIE**, I., Principles of Public International Law (4th ed) Ch. 1
- **GREIG**, D.W. International Law, Butterworths, 1976, pp. 1-51.
- **HARRIS**, D.J., Cases and Material on International Law (4th ed), Ch. 3.
- **MALANCZUK**, P., Akehurst's Modern Introduction to International Law (7th ed), Ch. 3.
- **SHAW**, M.N., International Law (3rd ed), Grotius Publications Ltd, Ch. 3.
- **STARKE**, J.G., Introduction to International Law (10th ed), Ch. 2.

LEGAL TEXTS

Statute of the International Court of Justice (Articles 38, 59, 60).

CASES

- Asylum case (*Colombia v Peru*), ICJ Reports, 1950 (International custom).
 - *Attorney General of Israel v. Adolf Eichmann*, District Court of Jerusalem, 1961 (Writings by experts)
 - Brazilian Loans Case (*France v. Brazil*), 1929, PCIJ Series A. No. 21 (Municipal Law as source).
 - Fisheries Jurisdiction Case (*UK v. Iceland*), ICJ Reports, 1973 (International Custom).
 - Free Zones Case (on *ex aequo et bono*).
 - Legality of the Threat or Use of Nuclear Weapons Case, Advisory Opinion of the ICJ, 1996 (Treaties, custom in IHL).
 - North Sea Continental Shelf Cases (*FRG v Denmark, FRG v Netherlands*), ICJ Reports, 1969 (*opinio juris*).
 - Reservation Case, Advisory Opinion of the ICJ, 1951 (Law-Making treaties).
 - South West Africa Case, ICJ Reports, 1950 (General principles).
-

**DEPARTMENT OF INTERNATIONAL LAW
LW 201**

LECTURE 4: SUBJECTS OF INTERNATIONAL LAW

READINGS

BOOKS

- **BROWNLIE**, I., Principles of Public International Law (4th ed), pp. 71-.86.
- **HARRIS**, D.J., Cases and Materials on International Law (4th ed), Ch. 4.
- **MALANCZUK**, P., Akehurst's Modern Introduction to International Law (7th rev. ed), Ch., 5 & 6.
- **SHAW**, M.N., International Law (3rd ed), Ch. 5.
- **STARKE**, J.G., Introduction to International Law (10th ed), Ch. 3, pp. 95-128.

LEGAL TEXTS

- Charter of the UN, 1945, especially Arts. 1, 2, 3 and 25.
- Montevideo Convention, 1933 (Art. 2) Reproduced in 28 *AJIL* Suppl. 75 (1934).
- Statute of the International Court Justice, Arts. 34.
- Treaty for the Establishment of the East African Community, 1999, Art. 4.

CASES

- *Deutsche Continental Gas-Gessellschaft* (1929) (territory as an attribute).
- *Island of Palmas* case (1928) (acquisition of territory).
- *North Sea Continental Shelf* Cases, ICJ Reports, 1969 (criteria of statehood).
- *Nottebohm* Case, ICJ Reports, 1955 (Nationality/citizenship).
- *Reparations for Injuries Suffered in the Service of the UN*, Advisory Opinion, 1949 (International Organisations).
- *Western Sahara Case*, Advisory Opinion of the ICJ, 1975, para. 93 (territory).
- *A-G of Israel v. Adolf Eichmann*, 36 *ILR* 5 (1961) (individual).

- *Nuremberg* Trials of 1947-49 (Individual in International Law) Reproduced in 41 *AJIL* 1947, 172-333.
- *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T.

**DEPARTMENT OF INTERNATIONAL LAW
LW 201**

LECTURE 5: JURISDICTION IN INTERNATIONAL LAW

READINGS

BOOKS

- **BROWNLIE**, I., Principles of Public International Law (4th ed) pp. 287-297.
- **HARRIS**, D.J., Cases and Materials on International Law (4th ed), Ch. 6.
- **MALANCZUK**, P., Akehurst's Modern Introduction to International Law (7th ed), Ch. Ch. 7, 8.
- **SHAW**, M.N., International Law (3rd ed), Ch. Ch. 11, 12.
- **SHEARER**, I.A., Extradition in International Law, 1971.
- **STARKE**, J.G., Introduction to International Law (10th ed), Ch. 8.

ARTICLES

- Akehurst, M., "Jurisdiction in International Law", Vol. 46 *British Yearbook of International Law*, 1972-73, pp. 152-169.
- Bowett, D.W., "Jurisdiction: Changing Patterns of Authority over Activities and Resources", Vol. 53 *British Yearbook of International Law*, 1982, p. 1.
- Harvard Research Draft Convention on Jurisdiction with Respect to Crime, Vol. 29 *American Journal of International Law*, Supplement 443 (1935), p. 435.
- Martland, Brock, "At the Crossroads of IL The Pinochet Case", No. 77 *Africa Law Review*, February-April, 1999, p. 6.

LEGAL TEXTS

- Charter of the United Nations, 1945 (especially, Articles I, 2(2), 2(3), and 2(4)).
- Charter of the OAU, 1963 (Articles 2(1)(c), 2(1)(e), 3(1), 3(2) and 3(3)).
- Statute of the International Criminal Tribunal for Rwanda (ICTR).
- Statute of the International Criminal Court.

CASES

- *A-G of the Government of Israel v Adolf Eichmann*, 36 ILR 5 (1961).
- Arbitration Ruling of the UN Secretary General, 26 *ILM* 1349 (1987).
- *Frisbie v Collins* (1952) US Supreme Court, 342 US 519.
- *Ker v Illinois* (1886) 119 US 436.
- *Pinochet*
- *State [of South Africa] v Ebrahim*, 31 *ILM* 890 (1992).
- The *Lotus Case (France v Turkey)*, PCIJ Reports Series A, No. 10.

- The *Nicaragua* Case (Merits) (*Nicaragua v USA*), ICJ Reports, 1986.
- The *Nottebohm* Case (*Liechtenstein v Guatemala*), ICJ Reports, 1955.
- The *Rainbow Warrior* Incident (*New Zealand v France*) aka *L'affaire Greenpeace*.
- *US v Alvarez-Machain*, 31 ILM 900 (1992).

LECTURE OUTLINE

- Concept
 - Elements of Jurisdiction: Necessity of distinguishing these
 - Basis for the exercise of Jurisdiction/Types of Jurisdiction
 - Territorial/Nationality/Protective/Universality/Others
 - Nationality as distinct from Citizenship
 - From *Leipzig Trials*, *Nuremberg*, *Eichmann* to *Akayesu*
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**DEPARTMENT OF INTERNATIONAL LAW
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LECTURE 6: MUNICIPAL LAW AND INTERNATIONAL LAW

READINGS

BOOKS

- **BROWNLIE**, I., Principles of Public International Law (4th ed), pp. 32-57.
- **HARRIS**, D.J. Cases and Materials on International Law (4th ed), pp. 69-101.
- **KABUDI**, P., Human Rights Jurisprudence in East Africa, 1995, pp. 26-28.
- **MALANCZUK**, P., Akehurst's Modern Introduction to International Law (7th ed), pp. 63-74.
- **SEATON**, E.E. and **MALITI**, S.T., Tanzania Treaty Practice, 1973, pp. 99 and 110 et seq.
- **SHAW**, M.N., International Law (3rd ed), pp. 101-134.
- **SHIVJI**, I.G., The Legal Foundations of the Union in Tanzania's Union and Zanzibar Constitution, pp. 2, 13-14.

LEGAL TEXTS

- *Azimio Na. 9 la 1996*. Resolution of the Parliament of the URT on the Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora).
- Basic Law for the Federal Republic of Germany, 1949, Article 25.
- Constitution of the Federal Russian Republic.
- Constitution of the Republic of Malawi, Article 211.
- Constitution of the Republic of Namibia, Article 144.
- Constitution of the Republic of South Africa, 1996, Articles 231-234.
- Constitution of the United Republic of Tanzania, Articles 63(3)(d) & (e).
- Vienna Convention on the Law of Treaties of 1969, Articles 27, 46, 47.

ARTICLES

- Bradley, C.A. "Federal Courts and the Incorporation of International Law", III *Harvard Law Review* (1998), pp. 2260-2275.
- Erasmus, G., "The Namibian Constitution and the Application of International Law", in D. van Wyk, M. Wierchers and R. Hill (eds), **Namibian Constitutional and International Law Issues**, Pretoria: University of South Africa, 1991, pp. 81-110.
- Kamanga, K., International Human Rights Law as Reflected in Tanzania's Treaty and Court Practice, [Paper Presented at the Judges' Course on Constitutionalism and Human Rights Held at Faculty of Law, UDSM, 1998.

- Mason, Sir Anthony, “The Relationship Between International Law and National Law, and its Application in National Courts”, *Commonwealth Law Bulletin*, April 1992, pp. 750-754.
- Partsch, K.J., “International Law and Municipal Law”, in Rudolf Bernhardt (ed) **Encyclopedia of Public International Law**. Vol. II, North Holland, 1995, pp. 1183-1202.
- Peter, C.M., “Incorporation of International Conventions in the Municipal Law: The Case of Environment Protection Conventions in Tanzania”, *International Law Review*, No. 2, May-August 1997, pp. 149-188.
- Rambaud, P., “International Law and Municipal Law: Conflicts and their Review by Third States”, I Rudolf Bernhardt (ed), *ibid.*, pp. 1202-1206.
- Viljoen, F., “Application of the African Charter on Human and Peoples’ Rights by Domestic Courts in Africa”, Vol. 43 *Journal of African Law*, 1999, pp. 1-17.

CASES

- [For Tanzania Case Law on the subject, consult the article by Kamanga cited above].
- *Barcelona Traction Case*, ICJ Reports, 1970, pp. 3, 37, pp. 71-72, pp. 233-234.
- *Ex-parte Salamat Bibi* [1976]1 WLR 979, 984.
- *Free Zones Case*, 1932.
- *German Interests in Polish Upper Silesia Cases*, PCIJ Series A, No. 7, 1926 at p. 19.
- *Okunda v. R.*, [1970] E.A. 453.
- *R.v. EAC* [1970] E.A. 457.
- *Salomon v Commissioner of Customs & Excise* [1967]2 QB 116 at 143.
- *South West Africa/Namibia* (Advisory Opinions and Judgements), ICJ Reports 1950, p. 148.
- *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] QB 529, 557.

LECTURE OUTLINE

- Nature of the Problem of the interrelationship
 - How International Law Relates to Municipal Law
 - How Municipal Law Relates to International Law
 - National Constitutions
 - Tanzania Case Law
-

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LECTURE 7: LAW OF TREATIES

READINGS

BOOKS

- **BROWNLIE**, I., Principles of Public International Law (4th ed), pp. 603-635.
- **HARRIS**, D.J., Cases and Materials on International Law (4th ed), pp. 729-816.
- **KAPOOR**, S.K., A Textbook of International Law (5th ed), Central Law Agency, 1982, pp. 389-410.
- **MALANCZUK**, P., Modern Introduction to International Law (7th ed), pp. 130-146.
- **SEATON**, E.E. and **MALITI**, S.T., Tanzania Treaty Practice, 1973.
- **SHAW**, M.N., International Law (3rd ed), pp. 560-603.
- **TUNKIN**, G.I. (ed), International Law, Progress Publishers, 1986, pp. 148-173.

LEGAL TEXTS

- Charter of the United Nations, 1945, especially Article 102.
- Constitution of the United Republic of Tanzania, 1977, especially Articles 63(3) (d) and (e).
- II Yearbook of the International Law Commission (1966) 177-274.
- Treaty for the Establishment of the East African Community, 1999.
- Vienna Convention on the Law of Treaties, 1969, Text in 8 *ILM* (1969) 679, 63 *AJIL* (1969) 875.

ARTICLES

- Bowett, D.W., “Reservation to Non-Restricted Multilateral Treaties”, 48 *BYIL* (1976-77), 67.
- Charterjee, S.K., “International Law of Treaties: Substance or Shadow?”, 27 *Indian JIL* (1987) 13.
- Frank, T.M., “Taking Treaties Seriously”, 82 *AJIL* (1988) 67.
- Kearney & Dalton, “The Treaty on Treaties”, 64 *AJIL* (1970).
- Pisillo-Mazzeschi, “Treaty and Custom: Reflections on the Codification of International Law”, 23, No. 1, 2 *Commonwealth Law Bulletin* (1997) 549.
- Rosenne, S., “Vienna Convention on the Law of Treaties”, in **EPIL**, Vol. 7 (1984), pp. 525.
- Sinclair, I.M., “The Principles of Treaty Incorporation and their Application by the English Courts”, 63 *ICLQ* (1963), pp. 508-551.

CASES

- *Fisheries Jurisdiction* case, ICJ Report, 1973 (Invalidity, Termination).
- *Free Zones of Upper Savoy and the District of Gex*, PCIJ Reports, Series A/B No. 46, 1932 (Third States).
- *Genocide Case*, Advisory Opinion of the ICJ, 1951 (Reservations).
- *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, Advisory Opinion, ICJ Reports, 1971 (Breach of Treaty).
- *Legal Status of Eastern Greenland*, PCIJ Reports, Series A/B, No. 53, 1933 (Format).
- *Nicaragua* case, ICJ Report, 1984 (Denunciation).

LECTURE OUTLINE

- Purpose of Treaties
 - Classification of Treaties
 - Vienna Convention on the Law of Treaties, 1969
 - Definition
 - Major Rules
 - Treaty-Making Process (Negotiations to Entry Into Force)
 - Reservations
 - Interpretation
 - Depositary
 - Registration
-

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LECTURE 8: STATE RESPONSIBILITY

READINGS

BOOKS

- **BROWNLIE**, I., Principles of Public International Law (4th ed), pp. 432-476.
- **HARRIS**, D.J., Cases and Materials on International Law (4th ed), 460-599.
- Malanczuk, P., Akehurst's Modern Introduction International Law, pp. 254-272.
- Shaw, M.N., International Law (3rd ed), pp. 481-529.
- Starke, J.G. International Law (10th ed), pp. 293-320.
- Von Glahn, G., Law of Nations: An Introduction to Public International Law (5th ed), Macmillan, 1986, pp. 227-255.

ARTICLES

- Bedjaoui, M., "Responsibility of States, Fault and Strict Liability", 10 EPIL (1987), 358-362.
- Boyle, A.E., "State Responsibility and International Liability for Injurious Consequences of acts Not Prohibited by International Law: A Necessary Distinction?", 39 *ICLQ* (1990) 1-26.
- Jagota, S.P., "State Responsibility: Circumstances Precluding Wrongfulness", 16 *Netherlands Yearbook of International Law* (1985), 249-277.
- Von Glahn, G., Law of Nations: An Introduction to Public International Law (5th ed), Macmillan, 1986, pp. 227-225.

CASES

Barcelona Traction, Light and Power Co. Ltd., ICJ Report, 1970, 3.
Home Missionary Society Claim (1920), VI RIIA, 42.
Youman's Claim (1926), IV RIIA, 110.
Caire Claim (1929), V RIIA, 516.
Panevezys-Saldutskis Railway (1937), PCIJ Series A/B No. 76, 16.
Nottebohm, ICJ Report 1955, 4-65.
Saghi v Islamic Republic of Iran, Iran-U.S. Claims Tribunal, Jan. 22, 1993, 87 AJIL (1993) 447-452.
Flexi-Van Leasing Inc. v Islamic Republic of Iran, Iran-U.S. Claims Tribunal, Order of December 15, 1982.
Ambatielos (Greece v UK) (1956), XII RIIA 83 or 23 ILR (1956) 306.

LEGAL AND OTHER TEXTS

- Draft Articles on State Responsibility, 1978, Text in Brownlie, I., BDIL (4th ed), 426.

LECTURE OUTLINE

- Concept
 - Draft Articles on State Responsibility, 1978
 - Basis for Responsibility
 - Nationality of Claims
 - Protection of Resident Aliens
 - Exhaustion of Local Remedies
-

**DEPARTMENT OF INTERNATIONAL LAW
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LECTURE 9: DIPLOMATIC LAW

READINGS

BOOKS

- Brownlie, I., *Principles of Public International Law* (4th ed), pp. 346-365
- Feltham, R.G., *Diplomatic Handbook* (6th ed), Longman, 1993
- Harris, D.J., *CMIL* (4th ed), pp. 319-346
- Malanczuk, Akehurst's *Modern Introduction to International Law*, pp. 123-129
- Satow's *Guide to Diplomatic Practice* (5th ed), 1979
- Sen, A., *A Diplomat's Handbook of International Law and Practice*, 1965
- Starke, J.G., *Introduction to International Law* (10th ed), pp. 421-435

ARTICLES

- Gross, L., "The Case Concerning United States Diplomatic and Consular Staff in Tehran: Phase of Provisional Measures", *74 AJIL* (1980) 395
- Kerley, E.L., "Some aspects of the Vienna Conference on Diplomatic Intercourse and Immunities", *56 AJIL* (1962) 88
- O'Keefe, P.J., "privileges and Immunities of the Diplomatic Family", *25 ICLQ* (1976) 329
- Wilson, "Diplomatic Privileges and Immunities: The Retinue and Families of the Diplomatic Staff", *14 ICLQ* (1965) 1265

LEGAL TEXTS

- Vienna Convention on Diplomatic Relations, 1961. Text in *500 UNTS* 95, *55 AJIL* (1963) 1064 or Brownlie, *BDIL* (4th ed), pp. 217-234
- Vienna Convention on Consular Relations, 1963. Text in *57 AJIL* (1963) 995
- (Tanzania) Diplomatic and Consular Immunities and Privileges Act, 1986 (Act No. 5 of 1986)
- Yearbook of the International Law Commission, II 1958
- Draft Articles on State Responsibility, 1978

CASES

- *Tehran Hostages Case* (USA v Iran), ICJ Report, 1980 especially, *paras.* 58, 59 61, 67.
- *Chorzow Factory Case* (Germany v Poland), PCIJ Reports Series A, No. 17, p. 29

- *R v Guildall Magistrate's Court, ex-parte Jarrett-Thorpe*, as quoted in Harris, CMIL (4th ed) 328
- Libyan Peoples' Bureau Incident, Quoted in Harris, CMIL 330

LECTURE OUTLINE

- Sources of the Law: Overview
 - Establishment of Diplomatic Relations
 - Cumulative Diplomatic Representation
 - Rights and Duties of the Sending State
 - Immunities and Privileges
 - Rights and Duties of the Receiving State
 - Summary of the Major Rules
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LECTURE 10: USE OF FORCE

READINGS

BOOKS

- Cassese, A., *The Current Regulation of the Use of Force*, 1986
- Harris, D.J., *CMIL* (4th ed), pp. 817-907
- Malanczuk, P., *Akehurst's Modern Introduction to International Law* (7th ed), pp. 306-317
- Starke, J.G., *International Law* (10th ed), pp. 519-525
- Van Glahn, G., *Law of Nations*, 1986, 557-582

LEGAL TEXTS

- Charter of the UN, 1945 (especially, Articles 2 (4), 24, 39-51)
- Covenant of the League of Nations, 1919 (especially Articles 15, 16)
- General Treaty for the Renunciation of War, 1928 (especially Articles I and II)
- Rome Statute of the International Criminal Court, 1998
- UN General Assembly Declaration (Resolution 2625) Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the UN, 1970 (Declaration on Principles of International Law)
- UN General Assembly Resolution (3314) on the Definition of Aggression, 1974

CASES

- *Caroline case*, Materials in 32 AJIL (1938) 82
- *Corfu Channel case (UK v Albania)*, ICJ Report 1949
- *Harib Fort Incident*, SCOR 19th Year, 1106th – 1111th Meetings, April 2 – 8, 1964
- *Nicaragua case (Nicaragua v USA)* (Merits), ICJ Report, 1986
- *Nuclear Weapons case*, Advisory Opinion, ICJ Report, 1996

LECTURE OUTLINE

- *Jus ad bellum* and *Jus in bello*
 - Development of the rule and its scope
 - Preconditions for the Use of Force by States
 - Special Role of the UN Security Council and Regional Bodies
 - Use of Force and International Humanitarian Law (IHL, or the Law of Armed Conflict).
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LECTURE 11: PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES

READINGS

BOOKS

- Amate, C.O.C., Inside the OAU: Pan Africanism In Practice, Macmillan: 1986, Ch. 5 'The Commission of Mediation, Conciliation and Arbitration'.
- Hariss, D.J., Cases and Materials in International Law (4th ed), Ch. 'Arbitration and Judicial Settlement'.
- Malanczuk, P., Akehurst's Modern Introduction to International Law (7th ed), Routledge: 1997, Ch. 18 'Peaceful Settlement of Disputes Between States'.
- Merrills, J.G., International Dispute Settlement (2nd ed), Cambridge, 1991.
- Naldi, G.J., The OAU: An Analysis of its Role, pp. 19-26, 33-68.
- Rosenne, S., The Law and Practice of the International Court, 1920-1996 (3rd ed) in 4 Volumes, Martinus Nijhoff Publishers, 1997.
- Starke, J.G., Introduction to International Law (10th ed) Ch. 'International Disputes'.
- White, N., Keeping the Peace: The United Nations and the Maintenance of International Peace and Security (2nd ed), Manchester University Press, 1993.

LEGAL TEXTS

- (OAU) Mechanism for Conflict Prevention, Management and Resolution, 1993.
- Agreement on the Establishment of the Iran-United States Claims Tribunal, 1981 (The Algiers Accords).
- Articles of Agreement of the International Monetary Fund, 1944.
- Charter of the OAU, 1963, Art. 3(4), 19.
- Charter of the United Nations, 1945, Art 1(1), 2(3), 33.
- Convention on Diplomatic Relations, 1961.
- Declaration on Principles of International Law, 1970.

- Protocol (to the OAU Charter) of the Commission of Mediation, Conciliation and Arbitration, 1964.
- Protocol of 1977 to the Geneva Conventions, 1949, Art. 90.
- Statute of the International Court of Justice, 1945, Art. 34-38, 39-64, 65-68.
- The General Act for the Pacific Settlement of Disputes, 1928 Text in 71 UNTS 101.
- UN Draft Rules on Conciliation of Disputes Between States.
- United Nations Convention on the Law of the Sea, 1982, Part XV.
- World Trade Organization Agreement, 1994.

ARTICLES

- Ago, R., "Binding' Advisory Opinions of the International Court of Justice", 85 *AJIL* (1991), 439-451.
- Bindschedler, R.L., "Conciliation and Mediation", in *EPIL* 4 (1982), 133.
- Bowett, D.W., Crawford, J., Sinclair, I. And Watts, A.D., "The International Court of Justice: Efficiency of Procedures and Working Methods, 45 *ICLQ*, Supplement (1996).
- Brownlie, I., The Peaceful Settlement of International Disputes in Practice, 7 *Pace ILR* (1995), 257-279.
- Chinkin, C.M., "The East Timor Case (Portugal v. Australia), 45 *ICLQ* (1996), 712-724.
- Dugard, J., "1966 and All That. The South West African Judgement Revisited in the East Timor Case". 8 *African Journal of ICL* (1996) 549.
- Jennings, R., "The International Court of Justice after Fifty Years", 89 *AJIL* (1995), 493-505.
- Lavallo, R., "Dispute settlement Under the Vienna Convention on Succession of States in Respect of Treaties", 73 *AJIL* (1979) 407.
- Maluwa, T., "The Peaceful Settlement of Disputes Among African States, 1963-1983: Some Conceptual Issues and Practical Trends", 38 *ICLQ* (1989), pp. 299-320.
- Merrills, J.G., "Interim Measures of Protection in the Recent Jurisprudence of the ICJ", 44 *ICLQ* (1995) 90-146.
- Rosenne, S., "Decolonisation in the International Court of Justice", 8 *African Journal of ICL* (1996) 564.

- Umbricht, V.H., Principles of International Mediation: The Case of the East African Community, 187 *RdC* No IV (1984) 307-389.

CASES

- *Corfu Channel Case* (Preliminary Objection), ICJ Report, 1948, 15-48, at 27-8.
- *East Timor Case* (Portugal v Australia), ICJ Report, 1995.
- *Haya de la Torre case* (Judgment), ICJ Report 1951, 71-84.
- *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Report, 1996.
- *Nicaragua Case* (Merits), ICJ Report, 1996.
- *North Sea Continental Shelf Cases*, ICJ Report, 1969, para 47.
- *South West Africa Case*, ICJ Advisory Opinions of 1950, 1955 and 1956.
- *South West Africa Case*, ICJ Report 1966, 6-505.

**THE UNIVERSITY OF DAR ES SALAAM
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DEPARTMENT OF ECONOMIC LAW**

**LAND LAW (LW 202)
COURSE OUTLINE**

This outline indicates only the minimum essential readings. Students are advised to consult other readings in the University Library particularly when preparing for seminars/tutorials.

The following are prescribed as basic text books.

1. James, R.W., (1971), Land Tenure and Policy in Tanzania, East African Literature Bureau, Nairobi, 1971.
2. James, R.W., and G.M. Fimbo (1973), Customary Land Law of Tanzania, A Source Book, East African Literature Bureau, Nairobi, 1973.
3. Fimbo, G.M., (1992) Essays in Land Law, Tanzania, printed by the Dar es Salaam University Press, 1992.
4. Riddal, J.G., (1983), An Introduction to Land Law, Third Edition, Butterworths, London, 1983.
4. MEGARRY's Manual of the Law of Real Property, Sixth Edition, Stevens & Sons, London, 1982.

SEMESTER I

A. AN INTRODUCTION TO THE LAND LAW OF TANZANIA.

SECTION 1: Land Law Teaching and Learning; Sources of Land Law.

A. Land Law Teaching and Learning.

Tension between, on the one hand, freedom to deal with land in the market and, on the other, protection for the users and occupiers of land.

Barclays Bank Plc v. O'Brien [1993] 4 All ER 417, HL.

Lloyds Bank Plc v. Rosset [1992] 2 WLR 867

Mtumwa Rashidi v. Abdallah Iddi & Another Court of Appeal of Tanzania at Dar es Salaam. Civil Appeal No. 22 of 1993.

Report of the Presidential Commission of Inquiry into Land Matters, 1992.
National Land Policy, 1995.

B. Sources of Land Law.

Land Act No.4 of 1999 ss.180, 181, 182,183; Village Land Act, No. 5 of 1999 s.20.

1. Written Law-Ordinances and Acts of Parliament.
Judicature and Application of Laws Ordinance, Cap.453.
Land (Law of Property and Conveyancing) Ordinance, Cap.114.
2. Customary Law.
Tanganyika Order in Council, 1920 article 24.
Land Ordinance, Cap.113 sections 2, 13.
Land (Law of Property and Conveyancing) Ordinance, Cap.114 section 16.
Judicature and Application of Laws Ordinance, Cap.453 section 9.
Land Act No.4 of 1999, s.180;
Village Land Act. No. 5 of 1999 s.20.
3. Islamic Law.
Judicature and Application of Laws Ordinance Cap. 453 section 9.
Land (Law of Property and Conveyancing) Ordinance, Cap.114 section 16.
4. English Law – Common Law, doctrines of equity and statutes of general application.
Land (Law of Property and Conveyancing) Ordinance, Cap.114 section 2.
Judicature and Application of Laws Ordinance, Cap.453 section 2;
Land Act, No.4 of 1999 s.180.
5. Indian Laws.
Indian Laws (Application) Ordinance Cap.2.

SECTION 2: Economy and Society in the Pre-colonial period. Modes of production:-
pastoral mode, village community or communal mode of production and feudal mode of
production.

References:

Kjekshus, H., (1977), Ecology, Control and Economic Development in East African
History, The Case of Tanganyika, 1850-1950, Heinemann, London, 1977.
Corry, H., (1955), Report on Nyarubanja System in Bukoba, 1955.
Reining, Priscilla C., (1962), Haya Land Tenure: Land Tenancy, Anthropological
Quarterly, Vol.35/2 (April 1962).

Rweyemamu, J.F., (1973), Underdevelopment and Industrialization in Tanzania, A Study of Perverse Capitalist Industrial Development, Oxford University Press, Nairobi, 1973.

SECTION 3: Colonialism.

A. German Rule 1884-1918.

Establishment of German administration – declaration of land as Crown land. Plantation agriculture – grants of land to white settlers by ‘Conveyance of ownership’ and ‘leaseholds’. Peasant cultivation – ‘a Nyamwezi and peanut policy’.

References.

Illiffe, J., (1971), Agricultural change in Modern Tanganyika, an Outline history, East African Publishing House, Nairobi, 1971.

Illiffe, J., (1973), Tanganyika Under German Rule, 1905-1912, East African Publishing House, Nairobi, 1969, reprinted 1973.

Imperial Decree regarding Creation, Acquisition and conveyance of Crown Land and regarding the Acquisition and Conveyance of Lands in general in German East Africa, published on 26/11/95.

Instructions regarding the carrying out of the Imperial Chancellor, published on 27/11/95. Ordinance by the Governor regarding the application and carrying out of the Imperial Decree of 26 November, 1895, regarding creation, Acquisition and Transfer of Land in G.E.A., and rules thereunder by the Imperial Chancellor dated the 27 November 1895 published on 4/12/96.

B. **British Rule 1918-1961.**

I. Plantation agriculture, confirmation of German alienations and establishment of new plantations-export crops.

Tanganyika Order in Council 1920.

Enemy Property (Disposal) Proclamation 1920.

German Property (Liquidation) Ordinance 1921, No. 42 of 1921.

Land Ordinance 1923, No. 3 of 1923.

Land Registry Ordinance 1923, No. 15 of 1923, Cap. 70 of the 1928 Revised Laws of Tanganyika.

Labour supply – proper crop husbandry – increased production of crops – internal marketing system – agricultural credit.

Sisal Industry Ordinance 1928 No. 2 of 1928.

Sisal Industry Ordinance 1945, No.15 of 1945 Cap. 143 Laws of T. 1947.

Tobacco (Non-Native Industry) Ordinance 1941 No. 17 of 1941 Cap. 149 Laws of T. 1947.

Tobacco (Non-Native Industry) Ordinance 1941 No.17 of 1941 Cap.149 Laws of T.1947.

Crops (Increased Production) Ordinance 1944, No. 1 of 1944 Cap.151 Laws of T. 1947.

Master and Native Servants Ordinance 1923, No.32 of 1923.

Hut and Poll Tax Ordinance 1922, No. 12 of 1922 Cap. 63 Laws of T.1928

Native Tax Ordinance 1934 No. 20 of 1934 Cap. 183, Laws of T.1947.

The Land Bank Ordinance 1947 No.47 of 1947.

Application of English Law.

The Land (Law of Property and Conveyancing) Ordinance 1923, No.2 of 1923, Cap.114.

Cases:

Land Officer v. Motor Mart and Exchange (1953-1957) 2 TLR 295.

A.G. v. Motor Mart and Exchange (1960) E.A. 689.

References:

James (1971), Chap. 2 Section 1.

Seidman, R.B., (1964) The Reception of English Law in Colonial Africa, E.A.L.R. Vol.2 No. 1 (1964) 47.

(b) Some concepts, Principles and Institutions of Received Law.

1. Definition of "Land".

Conveyancing and Law of Property Act 1881 (44 & 45. C.41), (U.K.), s.2(ii)

Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal and houses, and other buildings, also an undivided share in land.

Interpretation Act 1889, U.K., states inter alia, "the expression land shall include messuages, tenements, houses, buildings of any tenure."

Fixtures: Note the maxim *quicquid plantatur solo solo cedit*. The tests as to whether a chattel is in fact a fixture are: the degree of annexation and the purpose of annexation.

Mines and minerals.

At common law mines and minerals below the surface of the earth go with the ownership of the soil above them. But gold and silver are vested in the crown by virtue of Royal Prerogative. In Tanganyika the colonizers vested all mines and minerals in the state.

Mining Ordinance Cap. 125, s.3. Mining Act, No. 5 of 1998.

Cases:

Commonwealth v. N.S.W. 1923 33 C.L.R. 1.
Moody v. Steggles (1879) 12 Ch.D. 261.
Virji v. Abdulrahman (1950) 24 KLR 24.
Shaw v. Devshi (1923) 17 KLR 20.

Reference:

Morton, A.L., (1976), A People's History of England, Lawrence & Wishart, London, 1976.

Classification of Land.

English Common law divides property into real and personal. The reasons for this classification are historical. Civil Law divides property into movable and immovable.

References:

James (1971) chap. 2 section 2.
Meggary (1982) Chaps. 1 and 2.
Simpson, A.W.B. (1961), An Introduction to the History of the Land Law, Oxford University Press, London 1961, Chaps. 1-4.

Tenures and Estates.

Lord and Tenant – Services – Time – Basic doctrines. Tenures-extinct tenures-modern tenures. Estates-fee simple-fee tail-life estate.

II. Peasant Production.

New cash crop areas – supervision by commodity boards – by – laws – agricultural credit – internal marketing system – prices monopolistically fixed – rural stratification.

Land (Amendment) Ordinance, 1928, No.7 of 1928. Customary land rights.

Customary Tenure Through Case Law – Court's articulation of customary tenure.

In re Southern Rhodesia [1919] AC 211.
Amodu Tijani v. The Secretary, Southern Nigeria [1921] 2 AC.399.

Muhena bin Said v. Registrar of Titles (1948) 16 EACA 79.
Mtoro bin Mwamba v. A-G. (1953) 2 TLR 327, C.A., James and Fimbo (1973): 8.

Descendants of Sheikh Mbaruk bin Rashid v. Minister for Lands and Mineral Resources (1960) E A 348, James and Fimbo (1973): 389.

Hon. Attorney, General v. 1 Lohay Aknonaay 2. Joseph Lohay, [1995] TLR 80.

Reference:

James and Fimbo (1973) chaps. 1,3,10,11,1316.

Boards.

Native Coffee (Control and Marketing) Ordinance, 1937 No. 26 of 1937.

Native Tobacco (Control and Marketing) Ordinance, 1940 No. 39 of 1940.

Africa Agricultural Products (Control and Marketing) Ordinance 1949, No.57 of 1949

Cap. 284, 1947-1949 Laws of T.

Tea Ordinance, 1950 No. of 1950.

Lint and Seed Marketing Board Ordinance, 1952, No.11 of 1952.

Co operative Societies Ordinance, 1932, No.7 of 1932.

Agricultural credit to the peasant sector.

Local Development Loan Fund, 1947.

African productivity Loan Fund, 1955.

Bulk Loans.

Credit to Natives (Restriction) Ordinance, 1923, No.6 of 1923.

Credit to Natives (Restriction) Ordinance, 1931, No.16 of 1931.

Attempt at individualization of land ownership in the peasant sector.

Precapitalist/customary tenure in England, feudal tenure basis of English Land Law-
Capitalism-individual ownership of land.

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SEMESTER II

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- (a) Importance of distinction.
- (b) Nature and characteristics of Joint tenancy and tenancy in common.

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- (c) Determination.

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Succession Act 1865 of India.

Succession (Non-Christian Asiatics) Ordinance, Cap. 112.

SECTION 5: LIMITATION OF ACTIONS FOR THE RECOVERY OF LAND.

Length of period-the running of time-when time begins to run-postponement of the period-starting time running afresh-the effect of lapse of time.

Law of Limitation Act, 1971 No. 10 of 1971.

Cases:

Ahmed Abdulkarim v. Member for Lands and Mines (1958) E.A. 436.

Tayebali Adamji Alibhai v. Abdul Hussein Adamji Alibhai (1938) 5 EACA 1.

Peter Wanyoike Gathure v. A. Beverley (1965) E.A. 514.

Salim v. Boyd & anor. (1971) E A. 550

Hosea v. Njiru & anor. (1974) E A 526.

Wangwe Muhere v. Mogaya Chacha (1972) HCD n. 137.

Shivji v. Pellegrini (1972) HCD, n. 76.

H.J. Stanley & Sons Ltd. V. D.T. Dobie & Co. (T) Ltd 1974 LRT n.51.

SECTION 6: EASEMENTS.

Land Act No. 42 1999 Sections 143-158.

Law of Limitation Act, 1971, No. 17 of 1971, ss.31. 37.

Definition – Characteristics.

Ellenborough Park (1955) All E R 667, James and Fimbo (1973): 521.

- (i) Dominant and servient tenements
- (ii) Accommodate dominant one.
- (iii) Dominant and servient tenements owned by different persons.

Tejpar v. Bhimji 1 TLR 653.

- (iv) Right claimed must be capable of forming subject matter of an easement.

Creation of easements.

- (a) Prescription.

Enjoyment of right peaceably openly as of right for uninterrupted period of 20 years; expressed as **nec vi-nec clam.**

- (b) **Express grant.**

- (c) Express reservation.

Note the common law rule that a legal easement cannot be created by a simple reservation in favour of the grantor: Johnstone v. Holdway (1963) 1 Q.B 601, (1963) LQR 182.

Cordoll v. Second (Claufield Properties) (1968) 3 WLR 864.

- (d) Implied reservation.
Easements of necessity.
Intended easements.

- (e) Implied grant.
Easements of necessity.
Intended easements.
Ancillary easements.
Easements within the rule in Wheeldon . Burrows (1897) 12 Ch. D. 31.
Requirements: User must have been continuous and apparent.

Tejshi v. A-G of Kenya (1959) E A 630

Polden v. Bastard (865) L.R.1 Q. B. 156.

Hansford v. Jago (1921) 1 Ch.322.

Ward v. Kirkland (1966) 1 W1R 601.

Protection by registration – Law of Limitation Act, 1971, s. 37(3) and (4).

Extinguishment: Release – Discharge and Modification.

In re Freeman (1957) 1 WLR 560.

References:

Megarry (1982) chap. 13.

Riddal (1983) chap.17

The principles governing the acquisition of easements by use at customary law see cases set out in James and Fimbo (1973): Chap. 23.

SECTION 7: VENDOR AND PURCHASER.

Land Act No. 4 of 1999 ss 36-41, 61-76.

The Sale of Land – Assignment of the Right of occupancy.

(A) CONTRACTS.

1. Existence of a contract.

Caveat emptor

Notice – Actual notice

- Constructive notice
- Imputed notice.

Conveyancing Act, 1882, 45 & 46 c. 39, s. 3(1).

Cases:

Bailey v. Barnes (1894) 1 Ch. 25.

Oliver v. Hinton (1899) 2 Ch. 264.

Wilkes v. Spooner and Anor (1911) 2 K.B. 475.

Misrepresentation

Law of Contract Ordinance, Cap. 433, s. 18 and 19 (1).

Bartholomew Ndyanabo v. Bi Petronida Ndyamukama (1968) HCD. N. 359.

II Enforceability of the contract.

A. Need for Government approval.

Land Regulations, 1948, Reg. 3(a) and 3(c).

(i) Cases where approval has not been sought:

Nitin Coffee Estates Ltd. V. United Engineering Works Ltd, [1988] TRL 203.
Peter Karanti & 49 Others, Court of Appeal of Tanzania at Arusha, Civil Appeal No. 3 of 1988.

Sylveri Mushunga v. Theonestina Rwekanika (1974) E A 318; 1974 LTD, n. 30.
Chang'ome Construction Co. Ltd. V. Shivji (1966) EA 379; James and Fimbo (1973): 466.

Mohamedbhai v. Mtoo Tafakari (1953) 1 TLR 433, James and Fimbo (1973): 460.

Gangji v. Hemedi (1956) 23 E A 268; James and Fimbo, (1973): 463.

Patterson v. Kanji (1956) 23 EACA 106, James and Fimbo (1973): 488.

Kassam v. Kassam (1960) E A 1042, James and Fimbo (1973): 484.

Tito Kornelio v. Geoffrey B. Mshana. (1981) TLR 128.

Sheikh Ahmed El Haj v. Dhiyebi (1970) HCD. N. 134.

Salome Essau v. Abel Jeremia 1976 LRT. N. 47.

T.H. Patel v. Lawrenson & Matzen 1957 E A 299.

(ii) Cases where approval is sought but refused.

Rajper Ladak & Sons v. Rehmtulla Pirbhai Ltd (1980) TLR 328.

Freehold Titles (Conversion and Government Leases) Act 1963, Cap. 523 ss. 19 and 20.

National Bank of Commerce v. Desai & Others (1969) HCD n.206. James and Fimbo (1973): 480.

Paschal Joseph Mlay v. Anthony Phoneas (1968) E A 563; James and Fimbo (1973): 471.

Shirin Rajabali Jessa v. Alipio Zorilla 1973 LTD n. 84; (1973) EA 506.

Oplustil . Gaganakis (1972) HCD n. 63.

Mario v. Merali (1972) HCD. No. 75.

B. Part Performance.

Nitin Coffee Estates Ltd. V. United Engineering Works Ltd, [1988] TLR 203.

Abdually Alibhai Azizi B. Bhatia Brothers Ltd. Misc. Civil Appeal No. of 1999, Court of Appeal of Tanzania at Dar es Salaam.

IV. Terms of the Contract.

Cases:

East African Estates Ltd. V. Khalfan and Others, 14 KLR 76.

Jafferli & anor v. Borrisow (1971) HCD 117.

In re Nisbet & Pott's contract (1906) 1 Ch. 336 C.A.

Shantilal L. Shah v. G. Begum w/o L. Khan (1948) 15 EACA 25 (K).

Emmanuel Bwegilire v. Juma Hamisi (1967) HCD n. 45.

(B) CONVEYANCING

Instrument in prescribed form and requirement of registration.

Land Registration Ordinance, Cap. 334, s. 41.

Samp Duty Act 1972, No. 20 of 1970.

Duty of Vendor to Purchaser between Contract and Completion.

Mohamed H. Abdulla & Anor. V. G.M. Shah & ors. (1958) EA 754, P.C.(K).

Reference:

Megarry (1982), Chap. 9.

Riddal (1983), Chap. 13.

(C) CONTROLLING THE USE OF LAND BY COVENANT-COVENANTS AFFECTING LAND.

Privity neither of contract nor of estate: At law and in equity.

Grantees of Reversions Act, 1540, 32 Hen. 8, c. 34.

Real Property Act, 1845, 8 & 9 Vict. C. 106.

Conveyancing and Law of Property Act, 1881, 44 & 45 Vict. C. 41

Conveyancing Act, 1882, 45 & 46 Vict. C. 39.

Conveyancing Act, 1911, 1 & 2 Geo 5, c.37.

Land Registration Ordinance, Cap 334.

Freehold Titles (Conversion and Government Leases) Act 1963, No.24 of 1963, Cap. 523,

Restrictive Covenants.

Nature.

Case.

Tulk v. Moxhay (1848) 2 Ph.774.

1. To bind a purchaser of serient tenement.

(a) Covenant must be negative in nature even though positive in form, eg. To maintain he square uncovered with buildings.

(b) There must be a dominant tenement, exception the landlord's reversesion.

(c) It must not be personal to the coenantor.

- (d) It must be noted on the register.
- 2. The purchaser will take the dominant tenement with appurtenant rights if:
 - (a) The benefit of the covenant is assigned to him or it is annexed to the land purchased.
 - (b) The rule in *Elliston v. Reacher* (building scheme) applies.

See *Rosslyn Estates (in Liquidation) v. Underwood* 23 EACA 191.

Discharge.

Reference:

Megarry (1982): Chap. 12.
Riddal, (198) chap. 21.

SECTION 8: LANDLORD AND TENANT.

- (a) Terminology.

Lease-demise-tenancy-term of years-leasehold interest.
Lessor-Lessee-landlord-tenant-sublessor-sublessee.

- (b) Creation of leases.

Conveyance of registered land.

Land Act, [No. 4 of 1999 ss.77-110.
Land Registration ordinance, Cap. 334, ss. 41, 2 and 54. Form L.R. 8.
Stamp Duty Act 1972, No. 20 of 1972.

Non-compliance with formalities.

Souza Figueredo v. Moorings Hoel co. Ltd (1960) E A 926.
Kenneth Clarke v. Sondhi (1963) E A 107.
Onorata Della Santa & ors. V. Peera (1970) HCD. N. 22.
Gregory Mtafya v. Zainabu Lyimo 1976 LRT.n. 3.
Amratlal Damodar Maltasar & Anor. T/a Zanzibar Silk Stores v. A.H. Jariwalla t/a Zanzibar Hotel (1980) TLR 31. C.A.
Mrs. Clara D'Souza v. Kanyamala 1974 LRT.n. 27.

Statutory tenancy is created in certain cases by implication or application to the Regional Housing tribunal: Rent Restriction Act 1984, No.17 of 1984.

Chang'ombe Construction Co. Ltd v. Khatijabai Ebrahim Shivji (1966) E A 379, James and Fimbo (1973): 466.

Shirin Jessa v. Alipio Zorilla 1973 LRT.n. 84, (1973) E A 506.

Acquisition of Buildings Act, 1971, No. 13 of 1971., s. 7.

Habib Yusufali v. Abdulsattar Riazidin (1973) E A 74.

Jaffer Ladak v. Registrar of Buildings (1974) E A 139.

Rajper Ladak & Sons v. Rehmtulla Pirbhai Ltd (1980) TLR 328.

Registrar of Buildings v. Dr. A.H. Kombe (1982) TLR 61.

(c) Classification of Leases.

(i) Lease for fixed period.

Lace v. Chantler (1944) KB 368.

Options to renew: Gardner v. Blaxill (1960) 1 WLR 752.

Reviewed at 1960 LQR 453.

Sands v. Mtutual Benefits Ltd (1971) E A 156.

Habib Punja v. Agas (1967) 380.

Habib Yusufali v. Abdulsattar Riazidin (1973) E A 74.

Determination: by effluxion of time.

Singh v. Godley (1942) 20 KLR 57.

Din v. Bin Said (24) 2 KLR 66.

(ii) Reversionary Leases – Interesse termini.

In re Strand and Savoy properties (1960) 1 Ch. 582.

Weg Motors Ltd. V. Hales & Ors. (1962) 1 Ch. 49.

West Country Cleaners Falmouth) Ltd. V. Saly (1966) WLR 1485.

Lewis v. Baker (1905) 1 Ch. 46.

Note s. 55 of the Land Registration Ordinance, Cap 334.

(iii) Periodic Tenancies.

By agreement or operation of law.

Hassan Saleh v. Savides (1921-52) 1 TLR 451.

In re Seale (1912) 1 Ch. 610.

Ladies' Hosiery and Underwear Ltd. V. Parker (1930) 1 Ch. 304.

Adler v. Blackman (1953) 1 Q.B. 146.

Sidebotham v. Holland (1895) 1 Q.B. 378.

Waiver of right to determine lease by notice:

Century Automobiles v. Biemer (1965) E A 304.

(iv) Tenancies at will and sufferance.
Holding over-determination at the will either party.

(v) Tenancy by estoppel.

Chatrath v. Shah Cedar Mart (1967) E A 93.

Williams v. Mends 9 WACA 50.

Amokwaidoh v. UAC 1 WACA 178.

Century Automobiles v. Biemer (1965) E A 304.

(vi) Service Tenancy or Service Occupancy.

Rent Restriction Act, 1984, No. 17 of 1984, s.25(3) (I).

Cases:

Nitwa M. Msemembo v. Marco Ndawa 1974 LRT. No. 29.

Shell and B P Tanzania Ltd. V. Wilbald Fulgence Rweyagira, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 25 of 1984.

Leonard Sirima v. MECCO Ltd, Housing Appeals Tribunal, DSM, Appeal No. 13 of 1987.

(d) Rights and obligations of Landlord and Tenant in the absence of Express Agreement.

1. Position of the Landlord – Landlord’s Obligations.

(i) Implied Covenant for Quiet Enjoyment.

Land Registration Ordinance, Cap. 334, s. 56(2).

Rent Restriction Act 1984, No. 17 of 1984, ss. 38 and 39.

Cases:

Baynes & Co. v. Lloyd (1895) 1 Q.B. 820, (1895) 2 Q.B. 610.

Budd-Scott v. Daniell (1902) 2K.B. 351.

Markham v. Paget (1908) 1 Ch. 697.

Owen v. Gadd (1956) 2 Q.B. 99.

Perera v. Vandiyar (1953) 1 WLR 672.

Rep. V. Abdulrahman s/o Simon (1972) HCD n. 182.

Festo Ngowi v. Rep. 1974 LRT. n.26.

Kenny v. Preen (1963) 1 Q.B. 499.
Jones v. Lavington (1903) 1 K.B. 253 C.A.

(ii) Non-derogation from grant.

Cases:

Herz v. Union Bank of London, 2 Giff. 686.
Robinson v. Kilvert (1889) 41 Ch.D. 88.
Grosvenor Hotel Co. v. Hamilton (1894) 2 Q.B. 836.
Aidin v. Clark (194) 2 Ch. 437.
Harmer v. Jumbil (Nigeria) Tin Areas (1921) 1 Ch. 200.

Elliot.D.W., (1964) 80 LQR 244.

(iii) Implied condition for fitness for habitation.

Rent Restriction Act 1984, No. 17 of 1984, ss. 35(1) and 46 (1)
At common law there is no implied undertaking by the landlord.

Hart. V. Windsor (1844) 12 M & W 68.

Furnished lettings.

Smith v. Marrable (1843) 11 M & W 5, 152, E R 693.
Sarson v. Roberts (1895) 2 Q.B. 395.

Tenant's Remedies.

Smith v. Marrable 152 E R 693.
A. Savy v. Jenny Sadrudin Tharani (1965) E A 211.
B. Medhavaji v. Ker-Shavji (1930) 1 TLR 643.

2. Position of the Tenant

(i) Obligation to pay rent.
Land Registration Ordinance, Cap. 334, s. 56(1)(a).

(ii) Obligation not to commit waste.

Land Registration Ordinance, Cap. 334, s.56(1)(b).
Rent Restriction Act 1984, No. 17 of 1984, s. 35 (1).

Cases:

Wood . Porter (1916) 2 K B 91.
Marsden v. Heyes (1927) 2 K B 1.
Redmond v. Dainton (1920) 2 K B 256.
Sothe by . Grundy (1947) 2 All E R 761.
Cricklewood Property Investment Trust Ltd. V. Leighton's
Investment Trust Ltd (1945) A C 221.
Denman v. Brise (1949) 1 K B 22.

(iii) Restraint on alienation.

Rent Restriction Act 1984, No. 17 of 1984.

Cases:

Kenneth Thomas Clarke, trading as shipping General Serices v. Sondhi Ltd (1963) E A
107.
Esi v. Moruku (1940) 15 NLR 116.
Harry v. Martins (1949) 19 NIR 42.
Marques v. Edematie (1949) 19 NLR 75.

Mrs. Clara D'Souza v. Charles Frank Kanyawana 1974 LR.n.
Amratlal Damodar Maitasar and Anor. T/a Zanzibar Silk Stores v. A.H. Jariwalla t/a
Zanzibar Hotel (1980) TLR 86.
Onorata Della Santa & Ors. V. Peera (1970) HCD n. 22.
Gregory Mtafya v. Zainabu Lyimo 1976 LRT.n. 3.
Ndesario v. John (1971) HCD.n.243.

(iv) Landlord's right to view.

Land Registration Ordinance, Cap. 334, s. 56(1)©.

Landlord's remedies.

- (a) Suit for damages.
- (b) Distress for rent.

Distress for Rent Act, 1689, 2 W & M c. 5 (6 Statutes 143).
Distress for Rent Act, 1737, 11 Geo. 2 C.19.
Law of Distress (Amendment) Act 1888, 51 & 52 Vict. C. 21.
Law of Distress (Amendment) Act, 1908, 8 Edw. 7, c.44.
Rent Restriction Act 1984, No. 17 of 1984, s. 26.

Cases:

Karim Jivanjee & Co. v. Official Receiver of the Government of Tanganyika; The Trustee of the Property of Gordeon.

McDiarmid (decd), the Bankrupt (1936) 3 EACA 94.

Wampwewo Service Station v. Italian Garage (Pizzandi) Ltd. (1963) E a 455.

Souza Figuiredo & Co. Ltd. V. George Panagopaulus and Ors. (1959) E A 756.

Kassamali Bhogadia v. Nasser (1963) E A 610.

Chatrath & Anor. V. Shah Cedar Mart (1967) E A 93.

Wachira v. R. (1967) E.A. 201.

(c) Forfeiture or right of Re-entry.

Land Registration Ordinance, Cap. 34, s. 56 (3)

Rent Restriction Act, 1984, No. 17 of 1984, s. 25(1) (a).

Forfeiture for non payment of rent.

Tenant's right to relief.

Common Law Procedure Act, 1852, 15 & 16 Vict. C. 76.

Conveyancing and Law of Property Act 1892, 55 & 56 Vict. C. 13, s. 4.

Freehold Titles (Conversion and Government Leases) Act 1963, No. 24 of 1963, Cap. 523, s. 29.

Forfeiture for Breach of other covenants

Coneyancing and Law of Property Act 1881, 44 & 45 Vict. 41. Ss. 14 and 67.

Cases:

Jamat v. Godinho (1936-51) 6 ULR 47.

Rugby School (Governors) v. Tannahill (1935) 1 K B 87.

Norton v. Romney Estates (1950) 2 WLR 363; (reviewed at 1965 Camb. L. J. 210.).

Relief against forfeiture.

Cases:

Rogers v. Rice (1892) 2 Ch 170.

Kiwanuka – Musisi . .v. Seggare (1973) E A 561.

Canini v. Suleiman and Anor. (1964) E A 619.

(d) Waiver

Cases:

Eastern Radio Service v. Patel (1962) E A 818.
Prem Vati v. Inchharan (23 (2) KLR 32.
Davenport v. R (1877) 3 A C 115.
Segal Securities Ltd. V. Thoseby (1963) 1 Q B 887.
Amratlal Damodar Maltaser v. A. H. Jariwalla (19800 TLR 86.
Clarke v. Grant (1950) 1 K B 104.
Carter v. Green (1950) 2 K B 76.

3. Merger.

Cases:

Capital & Counties Bank Ltd. V. Rhodes (1903) 1 Ch 631.
Re Fletcher Reading v. Fletcher (1917) 1 Ch 339.

4. Surrender.

Cases:

Foster v. Robinson (1951) 1 K B 149.
Collins & Anor, v. Claughton (1959) 1 All E R 95.
Baker v. Mrckel (1960) 1 Q B 657.

(e) Covenants in Leases.

1. Privity of Estates-Rights and Liabilities of original parties-Rights and Liabilities of Assignees.

Where the Lessee assigns the Lease.
Burdens of covenants.
Land Registration Ordinance, Cap. 334, s. 49(1).

Cases:

Spencer's Case (1583) 5 Co. Rep. 169. 77 E R 72 (K.B.)
Grescot v. Green (1700) 1 Salk 199.
Paul v. Nurse (1828) 8 B & C 486.
Harley v. King (1835) 2 Cr. M. & R. 18.
Benefits of Covenants.

Where the Lessor assigns the reversion.

Grantees of Reversions Act 1540, 32 Hen. 8 c. 34.
Conveyancing and Law of Property Act, 181, (44 & 45 Vict. C. 41) ss. 10, 11 and 58.
Conveyancing Act, 1882, 45 & 46 Vict. C. 39 s. 11.
Conveyancing Act, 1911, (1 & 2 Geo. 5. C. 37). S. 2.

Assignment of right to sue for damages or to forfeit for breach of covenant?

Fairest, P.B (1965) CLJ 210.

Flight v. Bentley (1835) 7 Sim 149.

Hunt v. Remnant (1854) 9 Exch. 635.

Covenant to sell the reversion.

Benefit of the option.

Grantees of Reversions Act, 1540, 32 Hen. 8, c. 34.

Cases:

Woodall v. Clifton 91905) 2 Ch. 257.

Griffith v. Pelton (1958) 1 Ch. 205, (reviewed at 1958 74 LQR 243).

Hall v. Erwin (1888) 37 Ch.D. 74.

Bryant v. Hancock & Co. Ltd (1898) 1 Q.B. 716, (1899) A C.442.

Burden of the option.

- (f) Leases and Licences.
Importance and distinction.

Reference:

Megarry (1982) Cap. 11.

James, R.W. (1967), Some Problems on Leases and Licences, 1967 EALJ 246.

Case:

Ruanda Coffee Estates Ltd. V. Singh (1966) E A 564, James and Fimbo (1973): 625.

SECTION 9: MORTGAGES.

- (a) The Common Law mortgage-legal mortgage of freeholds-legal mortgage of leaseholds – equity of redemption-equitable right of redemption.

Registered mortgage-IMPLIED COVENANTS-second and

Subsequent mortgages-Tacking-Transfer of mortgages-Equitable mortgages-the right of the mortgagee to redeem the property – the right to consolidate – Discharge of mortgage Mortgagee's remedies.

- (b) Registered Mortgages.

Land Act No. 4 of 1999 – ss. 111 – 142.
Land Registration Ordinance, Cap. 334.

Cases:

Hashard Ltd. V. Globe Cinema Ltd. And Ors. (1960) E A 1046.
Olinda de Souza Figuerido v. Kassamali Nanji (1962) E A 756, (1963) E A 381.

Manyara Estate Ltd. V. N.D.C.A. (1970) E A 177.
Pioneer Assurance Society Ltd. V. Kamunye and Ors. (1969) E A 54.

- (c) Transfer of Mortgages. Transfer of equity of redemption inter vivos.
- (d) Equitable mortgage.
 - i. Deposit of certificate of title.
Russel v. Russel 28 E R 1121.
Barclays Bank v. Gulu Millers Ltd (1959) E A 540.
Ottoman Bank v. Hanna Ghau (1961) E A 419.
 - ii. Defect in form.
Tebb v. Hodge (1869) L.R. 5 C.P. 73.
Guaranty Discount Co. Ltd. V. Credit Finance Corp. Ltd. And Anor. (1963) E.A 345.
Popatlal (Govindji) v. Raichand (Premchand) Ltd. (1963) E A. 69.
- (e) The right of the Mortgagor to redeem the property.
The right of redemption is inviolable (there must be no clog or fetter on the equitable right of redemption) – collateral advantages-who can redeem.

Cases:

Samuel v. Jarrah Timber (1904) A C 323, (1904), (1904) W N 110.
Lewis v. Frank Love Ltd. (1961) 1 W1R 261.
Reeve v. Lisle (1902) A C 461.
J. Fairclough v. Swan Brewery Co. Ltd (1912) A C 565.
Kningtsbridge Estates Trust Ltd. V. Byrne (1939) 1 Ch 441.
Biggs v. Hodinnott (1898) 2 Ch 307.
Noakes v. Rice (1902) A C 24.
Kreglinger v. New Patagonia Meat C. Ltd. (1914) A C 25.
City Land and Property (Holdings) Ltd. V. Dabrah (1968) Ch 166, (1967) 3 W1R 605,
(1967) 2 All E R 639.
Multiservice Bookbinding Ltd. V. Marsden (1979) Ch 8.

- (f) The right to consolidate.

Reservation of right-dates for redemption for both mortgages have passed-both mortgages made by the same mortgagor.

(g) Discharge of mortgage.

(h) Mortgagee's Remedies.

Final remedies.

Foreclosure-the maxim is 'foreclose down'.

For conduct of a foreclosure action see Order 32 Rule 1.

Barclays Bank D.C.O. v. Gulu Millers (1959) E A 540.

Equitable Mortgagee.

Sale-Express power – Statutory power of sale-Effect of sale.

Eriyazali Senkuba v. Uganda Credit and Savings Bank (1965)

E A 624, (1965) E A 500.

Warner v. Jacob (1882) Ch. D. 220

Vidot v. Babu Sharma (1966) E A 72.

Shah & Anor. V. Dewji (1965) E A 54.

Bhatt v. Singh (1962) E A 54.

D B Mehta v. Adolf A E Sequera (1965) EA 729, (1966) E A 384.

Popatlal v. isandjee (1962) E A 372.

Equitable Mortgagee.

Re Hodson & Howe's Contract (1887) 35 Ch.D. 668.

Sale by Court-For conduct of such sale see Order 32 Rule 4.

Ottoman Bank v. Hanna Ghau (1961) E A 425.

Gordon v. Boos (929) A C 781.

Odendaal and Official Receiver . Gray (1960) E A 263.

Sheikh Mohamed Bashir v. United Africa Co. (Kenya) Ltd. (1959) E A 864.

M.K. Lakhani v. S.K.H. Finance & Investment Co. Ltd (1958) E A 79.

Non Final remedies.

Action for possession.

Western Bank Ltd. V. Schindler (1970) Ch. 1.

Birmingham Citizen's Permanent Soc. V.

Pioneer General Assurance Soc. Ltd. V. Kamunye (1969) E a 54.

Equitable Mortgagee.

Barclays Bank v. Bird (1954) Ch. 274. (1954 2 WLR 319.

Finck . Tranter (1905) 1 K B 427.

Appointment of a Receiver.

Appointment out of court.

Conveyancing and Law of Property Act, 181, ss. 19 and 24.

Appointment by the Court.

Civil Procedure Code, 1966, Order 38.

Land Registration Ordinance, Cap. 334, s. 77.

Harrison v. Cannot 1915 2 ULR 178.

Chatrath v. Shah Cedar Mart (1967) E A 93.

Equitable Mortgagee.

Action on the covenant for repayment.

Narinder Kumar Jolly v. Lall Basant Singh (1962) E A 203.

Vidot v. Sharma (1966) E a 72.

The Diamond Jubilee Investment Trust Ltd. V. J. Hassan Jadavji (1964) E A 438.

References:

James (1971) chaps. 14 and 15.

Megarry (1982) chap. 14.

SECTION 10: TRUSTS OF LAND.

A trust of land falls under one of the 3 heads; (a) simple or bare trust, (b) settled land and (c) trust for sale.

Land (Law of Property and Conveyancing) Ordinance, Cap. 114, s. 2(1).

Statute of Frauds 1677 (UK).

Parry v. Carson (1963) E A 91.

Settled Land Act 1882, 45 & 46 Vict. C. 38

Settled Land Act 1884, 47 & 48 ict. C. 18.

Settled Land Act, 1890, 53 7 54 Vict. C. 29.

Trustee Act, 1893, 56 & 57 Vict. C. 53.

(a) Settled Land before 1964.

Effect of the Freehold Titles (Conversion and Governmentk Leases) Act, 1963, No. 24 of 1963, Cap. 523 on beneficiaries' interests and on powers of tenant for life, s. 5(2), s. 9(1).

Land Registration Ordinance, Cap. 334, ss. 30, 31.

(b) Settlement of right of occupancy granted under the Land Ordinance, Cap. 113.
Approval.
Land Regulations, 1948, r. 3.

(c) Trust for sale before 1964.
Effect of Cap. 523, s. 5(2) 4th Sch., amendment to the Settled Land Act, 1882. Effect of
disapplication of Cap. 523.

(d) Trust for sale of right of occupancy granted under the Land Ordinance, Cap. 113.

(e) Simple trust not within the S L A, 1882.

Saunders v. Vautier (1941) 4 Beav 115.
Trustees Investment Act, 1967, No.33 of 1967.

Reference:

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Prof. G. Mgongo Fimbo
Prof. Z.S. Gondwe.

15th June 2000.

GMF/ZSG/mk:

FACULTY OF LAW – UNIVERSITY OF DAR ES SALAAM
LW 203: LAW OF TORTS COURSE OUTLINE FOR LL.B. AND
POSTGRADUATE DIPLOMA

A. TEXBOOKS

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2. Clerk & Lindsell, *On Tort* (1982)
3. Fleming, J.G., *Law of Tort* (1971)
4. Hepple and Mathews, *Tort Cases and Materials* (1974)
5. Huaraka, T., “Tanzania Cases and Materials on The Law of Torts,” (1974)
Mimeo, Faculty of Law, UDSM.
6. Lewis, P., *Gatley on Libel and Slander* (1981)
7. Prosser, W.L., *Law of Torts*
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9. Salmond and Heuston, *The Law of Torts* (1981)
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11. Veitch, E., *East African Cases on the Law of Torts* (1972)
12. Weir, T., *A Casebook on Tort* (1983)

B. PUBLISHED ARTICLES

1. Fridman, “The Interaction of Tort and Contract” (1977) 93 *LQR* 422
2. Poulton “Tort or Contract” (1966) 82 *LQR* 345
3. Atiyah, “The Rise and Fall of Contract and Promises” (1983) 99 *LQR* 217
4. Williams, G. “The Definition of a Crime” (1955) 8 *Curr. Leg. Problems*
107
5. Fleming J.B. “Tort Law in Midstream” (1959) *Buffalo L.R.* 315
6. Jolowicz, “Liability for Accidents” (1968) *C.L.J.* 50
7. Williams, G. (1939), 7 *Camb. L.J.* 111
8. Williams, G., (1951) *Current Legal Problems* (137).

9. Wright, (1948), *Can Bar Rev.* 46.

C. TOPIC ONE:INTRODUCTION

1. Reception of the Law of Torts
2. Meaning of Tort
3. Theories on the Law of Torts
4. Foundations of Tortious Liability
5. Distinction Between Tort and Other Types of Liability.
6. General Characteristics of Tortious Liability.

Suggested Readings

Publications

1. Rogers, *Winfield and Jolowicz On the Law of Tort*, pp. 1-28
2. Salmond, pp. 1-37
3. Prosser, pp. 1-39
4. Flemming, pp 1-13
5. Williams, G., “Foundation of Torts Liability,” 7 *Camb. L. J.* (1939), 111.
6. “Contract, Tort and Crime” in 87 *LQR* 240
7. Huaraka, pp. 1-39
8. Milson, *Historical Foundation of the Common Law*, 1969, pp. 219-231, 244 – 261.
9. Milson, “Trespass from Henry III to Edward II,” 74 *LQR* (1958) 195, 407, 561
10. Holdsworth, *A History of English Law*, Vol. II, pp. 35-43.
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13. Pollock, *History of English Law*, Vol. II, pp. 511 - 543
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16. Wright “The Law of Torts,” (1948), *Can Bar Review*, 46

Cases

1. **Bradford Corpn.** (1985) AC 587
2. **Holmes v. Mather** (1975)
3. **Ashby v. White** (1703)
4. **Isidori Ndetikanga** (1969) HCD 186 (Huaraka)
5. **Alexander Kalibonaki** (Huaraka)
6. **Yahana’s case** (1962) Dig. Of Civ. App.
Vol. IX No. 222 (Huaraka)
7. **Gati Marwa** (1977) LRT No. 13
8. **Yaya Abedi** (1976) LRT No. 56
9. **Mariba Wangangi** (1977) LRT No. 7

TOPIC TWO: INTENTIONAL INVASIONS OF INTERESTS IN THE PERSON AND PROPERTY OR TRESPASS

A. International Invasion of Interests in Property.

Kiralfy “The Problems of a Law of Property in Goods” 12 *MLR* (1949) 424.

Milson “Not doing is not trespass [1954] *Camb. L.J.*”

I. Trespass to land

Khatibu bin Hamadi v. Issaji Nurbhai. 4 Z.L.R.

i. State of mind of defendant.

Visram & Karson v. Bhatt [1965] E.A. 789 55.

ii. Interest of the plaintiff.

Delaney v. Smith [1946] K.B. 393.

Nitwa Msemembo v. Marco N. Ndawa [1974] L.R.T.n.29

Moyo Farm Ltd v. Theuri [1973] E.A. 114.

iii. Damages.

Visram & Karsan v. Bhatt [1965] E.A.

Mendanca v. Malik [1950-1] K.L.R. 29

Ibji v. Vivji Nanji & Co. 5 Z.L.R. 65

II. _Trespass to Goods

Sullivan v. Osman [1959] E.A. 239

National Coal Board v. Evans [1951] 2 K.B. 861.

R.V. Yakob Tibifuhula & Anor [1961] (Unrep.) Huaraka p. 91

Wilson v. Lombank [1963] 1 All E.R. 740

Mukibi v. A.V. Bhasvar [1966] E.A. 557.

III. Conversion

i. Interest of the Flaintiff

Roberts v. Hyatt (1810) 2 Taunt 268.

(a) Bailment

City Motors 1933 Properties Ltd. v. Southern Arial Service [1961] CLR.

Whiteley v. Hilt [1918] 2 K.B. 868.

Nurdin Bandali v. Lombank (T) Ltd. [1963] E.A. 304

Tanzania Hire Purchase Act, 1966 [Act No. 22 of 1966] SS. 16 & 17.

(b) Finders

Armory v. Delmirie [1722] 93 E.R. 664.

South Staffs Water Co. v. Sharman [1896] 2 Q.B. 44.

(c) **Ius Tertii**

Jeffries v. Gr. Western Ry. Co. [1856] 119 E.R. 680.

Jetha Lila v. Besson & Co. [1915] 1 Z.L.R. 504.

ii. **Subject Matter**

Bwavu v. Gaston [1959] E.A. 219.

iii. **State of Mind of the Defendant**

Hint v. Bolt [1874] L.R. 9 Exch. 86.

Moorgate Mercantile Co. v. Finch & Read [1962] 2 Q.B. 701.

Andrews Mwasijange v. Andrea Joseph [1965] (Unrep.)

Huaraka p.95.

iv. **Act of Conversion**

R. v. Yakob Tibifumula & Anor [1961] (unrep.) Huaraka, p.91.

Mulgrave v. Ogden 1591.

Thaver v. Clark 12 K.L.R. 22

v. **Damages**

Thaver v. Clack 12 K.L.R. 22

Solloway v. McLaughlin [1938] A.C. 247.

III. **Detinue**

i. **Possession**

A.M. Sheth v. Nathwani [1960] E.A. 447.

ii. **Demand**

Capital Finance Co. v. Bray [1964] E.A. 159

iii. **Damages**

Strand Electric & Engineering Co. v. Brisford Enterprises Ltd. [1952] 2 Q.B.246

B Intentional Torts to the Person

i. Trespass and Negligence

Fowler v. Lenning [1959] 1 All E.R. 290

Letang v. Cooper [1964] 2 All E.R. 929

ii Trespass and Wilful Wrongs

Wilkinson v. Downton, 1897 2 Q.B. 57

Winfield and Goodhart, "Trespass and Negligence" 49 *L.Q.R.* (1933) 359.

I. Assault

Stephens v. Hyers [1830] C. & P.349.

II. Battery

Njarekita v. Director of Medical Services [1950] 17 EACA 60.

Letang v. Cooper [1964] supra.

M'lbui v. Dyer [1967] E.A. 315

Phillip v. Mkama [1970] H.C.D.n.93

Montage Chacha v. Mwita [1971] H.C.D. n.110

III. FALSE IMPRISONMENT

i. Character of the Act.

Bird v. Jones [1845] 7 Q.B. 742

Khan Lodhi v. Amina d/o Ali Ismail [1960] (Unrep.), Huaraka
p.53

R. v. Sefu Said [1964] E.A. 178.

Herd v. Weardale Steel, Coke & Coal Co. [1915] A.C. 67

ii Knowledge of the Plaintiff

Herring v. Royle [1834] 149 E.R. 1126

Meering v. Graham-White Aviation Co. [1919] 122 L.T. 44.

- iii **Directness**
Sekaddu v. Ssebaduka [1968] E.A. 213
Dritoo v. West Nile District Administration [1968] E.A.428
Simon Chatanda v. Abdul Kisoma [1973] L.R.T.n.11.

- iv. **Statutory Provisions**
Kionywaki v. Republic [1968] E.A. 195
Mzee s/o Selemani v. Republic [1968] H.C.D. n. 364.
Municipal Council of Mombasa v. Canham [1973] E.A.215.

- v. **Burden of Proof.**
Yowann Kasajja v. George Kabalale & Anor [1966] (unrep.),
Veitch p.190

- vi. **Damages**
Simon Chatanda v. Abdul Kisoma [1973] supra

MALICIOUS PROSECUTION

- i **Malicious Prosecution and False Imprisonment**
Kasana Produce Store v. Kato [1973] E.A. 190.

- ii **Proof of Damages**
Berry v. British Transport Commission [1961] 3 AER 65.

- iii **Proceedings**
Mboya v. Kitambi & Others [1969] H.C.D. n. 168
Nasai Mundui v. Witness Shegha [1975] L.R.T. n.64
John William v. Placid Kamba & Anor [1976] L.R.T. n. 63.

- iv. **Favourable Termination**

Festo s/o Sudi v. Solomon Mwakabana [1971] H.C.D. n.417

v. **Reasonable and Probable Cause**

Hicks v. Faulkner [1878] 8 Q.B.D. 167

Alimohamed Osman v. D.C. Hill [1955 – 1957] II T.L.R. (revd.),
183

Glinnski v. Mclever [1962] A.C. 726

Hamisi Mlawi v. Sianga Kalula (1966) (Inrep). Huaraka, p.36

Kagane v. A.G. and King [1969] E.A. 643.

William Chamafwa v. Francis Bitegeko [1975] L.R.T. n.36

vi. **Malice**

Yusufali Khanbai v. Oswald & Co. & Anor [1933] 15 K.L.R. 53

Osman v. Hill, [1953 – 1957] II T.L.R. (revd.), 183

Katterrengga v. A.G. [1973] E.A. 287.

**TOPIC THREE: NEGLIGENCE IN INVASIONS OF INTERESTS
IN PERSON AND PROPERTY.**

1. **DUTY OF CARE**

Heaven v. Pender [1883] 11 QBD 503

Donoghue v. Stevenson [1932] AC 562.

B.A. Mlinga v. Mwananchi Total Service Station (1972) HCD n.241

Dorset Yacht Co. Ltd. v. Home Office [1970] A.C. 1004

Deyong v. Shenborn [1946] K.B. 227.

Anns v. London Borough of Merton [1977] 2 WLR 1024

QUALIFICATIONS

(i) **Unforeseeable Plaintiff:**

Smith v. L & S.W. RAILWAY [1870] L.R. 6 C.P. 14

Palagraf v. Long Island Railroad [1928] 248 N.Y. 339.

Bourhill v. Young [1943] A.C. 92

(ii) **Omissions to Act:**

East Suffolk Rivers Catchment Board v. Kent [1941] A.C. 74.

(iii) **Nervous Shock:**

Goodhart, [1952] 16 *M.L.R.* 14

Wilkinson v. Downton [1897] II Q.B. 57.

Dulieu v. White & Sons [1901] II K.B. 669

Hambrook v. Stokes [1925] I K.B. 141

Owens v. Liverpool Corporation [1939] I K.B. 394.

Bourhill v. Young (Supra).

King v. Phillips [1953] I Q.B. 429.

Boardman v. Sanderson [1964] I W.L.R. 912.

Chadwick v British Ry. Bd. [1967] I W.L.R. 912.

(iv) **Negligent Misstatements**

Candler v. Crane Christmas & Co. [1951] II K.B. 164

Hedley Byrne & Co. v. Heller [1964] A.C. 465

Marianne Ingrid Winther v. Ardon Langrish & Southern Ltd. [1966]
E.A. 292.

Ronder v. Worsley [1967] I Q.B. 443; 1969 I A.C. 191

(v) **Economic Loss:**

Atiyah, [1967] 83 *L.Q.R.* 248

Weller & Co. v. Foot & Mouth Disease Ins. [1966] I Q.B. 569.

Electrochrome v. Welsh Blastics Ltd. [1968] 2 A.E.R. 205.

British Calanese Ltd. v. A.H. Hunt Ltd. [1969] I W.L.R. 959.

S.C.N. Ltd. v. Whitehall & Son Ltd. [1971] I Q.B. 337.

2. BREACH OF DUTY

Blyth v. Birmingham Waterworks Co. [1856] II Ex. 781

Factors Considered

(i) Magnitude of Risk:

Bolton v. Stone [1951] A.C. 850

Paris v Stephey B.C. [1951] A.C. 367

(ii) Utility of Defendant's Conduct:

Watt v. Herts C.C. [1954] 1 W.L.R. 635.

(iii) Practicability of Avoiding Harm:

Latimer v. A.E.C. Ltd. [1953]

(iv) Common Practice:

Woods v. Duncan [1946] A.C. 401

Roe v. Ministry of Health [1934] II Q.B. 66.

Cavanagh v. Ulster Weaving Co. Ltd. [1960] A.C. 146

(v) Care Towards Abnormal Persons:

Haley v. London Electricity Board [1963] A.C. 778.

(vi) The Reasonable Man:

Wells v. Cooper [1958] II Q.B. 265.

3. RES IPSA LOQUITUR

Scolt v. London & St. Katherine's Docks Co, (1865) 3H & C. 596

Requirements

- i. **Exclusive Control of Defendant:**
GEE v. Metropolitan Ry (1873) L.R. & Q.B. 161
EASSON v. L.N.E.R. (1944) 11 K.B. 421.

- ii **Could Not Have Happened Without Negligence:**
BYRNE v. BOADLE (1865) 2 H. & C. 722
FISH v. KAPUR (1948) 2 AER. 176.

- iii **Absence of Explanation**
BARKWAY v. S. WALES TRANSPORT CO. LTD, (1950) 1
AER 392

IV. Effect of the Doctrine:

- Moore v. R. Fox & Sons** (1956) 1 Q.B. 596.
- KISULA s/o MAKHURU v. KAHIBI,** (1961) Huaraka, p. 157
- YOWASI Ndiwalama v. M.G. Patel & Another,** (1961), Veitch, p. 53
- EMBO RD SERVICES LTD v. TEMINA RIIMI,** [1968] EA 22
- DAVID ANDERSON V. MCLEMENT** (1962), Huaraka, p.160
- POPE JOHN’S HOSPITAL V. KASOZI,** [1974] EA 221

4. Defences to Negligence

- 1. *‘Volenti Non Fit Injuria’*
- 2. Contributory Negligence
- 3. Act of God and Inevitable Accident
- 4. Statutory Authority

5.. Other Categories of Negligence

- (a) Occupiers’ Liability
- (b) Vicarious Liability
- (c) Employers’ Liability
- (d). Workmen’s Compensation

(a) **Occupiers' Liability**

A. Occupiers' Liability Act, 1968 (No. 54 of 1968) (T)

This Act is by and large similar to the English Occupiers' Liability Act 1957. It has minor differences which do not, however, affect the rules.

B. Common Law

(i) Who is an Occupier?

Cavalier v. Pope (1906) A.C. 428

Wheat v. E. Lacon and Co. (1966) A.C. 552

(ii) The Occupier, at common law, owes a different duty to different classes of visitors. These are:

(a) Contractees

(b) Invitees

(c) Licensees

(d) Trespassers

(iii) Assumption of risk S.3(5)

Bunker v. Brand [Charles] and Son (1969) 2 QB 480

(iv) Contributory negligence S.3(3) (b)

Wheat v. Lacon and son (1966) 1 QB 335, at 372,

Bunker v. Brand [Charles] and son. (supra).

(v) Independent Contractor S. 3(4) (b), S. 4(2)

A.M.F. International Ltd. v. Magnet Bowling (1968) 1 W.L.R. 1028

Woodward v. Mayor of Hastings (1945) KB 174

Some Special Cases Within the Act.

- (i) Fixed or Movable Structures ss. 2(3) (a); 2(1) **Kearney v. Waller** (1967) 1 QB 29
- (ii) Property s. 2(3) (b)
A.M.F. International Ltd v. Magnet Bowling (1968) 2 All E.R. 789
- (iii) Liability in contract (i); 6 (2) to a third party s. 4
Irving v. London C.C. (1965) S.J. 157
- (iv) Liability to Trespassers
Railways Commissioner v. Quinsland (1964) A.C. 1054
Herrington v. British Railways Board (1971) 2 QB 107
Videan v. British Transport Commission (1963) 2 QB 650

Children s.3 (3) (a)

Herrington v. British Railways Board (1971) 2 QB 107
Robert Addie & Sons. V. Dumbreck (1929) AC 358
Videam v. British Transport Commission
Glasgow Corp. v. Taylor (1922) AC. 44
Excelsior Wire Rope v. Callan (1930) AC 404
Philips v. Rochester Corp. (1955) 1 Q.B. 450

2. Vicarious Liability

The Circumstances under which an employer may be liable where harm is caused by an act or omission of someone doing work for her/him.

An employer is jointly and severally liable for any tort committed by his/her employee while acting in the course of their employment.

Morgans v. Launchbury (1971) 2 QB 245, (1972) (H.L.)
Glanville Williams, “Vicarious Liability...” (1957) 20 *MLR* 220

1. Who is an employee

(a) Control

Banaanmuun v. Cheyne 2 TLR (Revd) 283

Selle v. Associated Motor Boat (1968) EA 123

Stevenson, Jordan & Harrison v. Macdonald & Evans

(1952) 1 TLR 101, 111.

Cassidy v. Ministry of Health (1951) 2 KB 343

(b) Borrowed employees

Mersey Docks and Harbour Board v. Coggins and Griffith

(1947) AC 1

Churcher v. The Landing and Shipping Company of East Africa Ltd. (1957) E.A. 118

Mjige v. E.A. Railways and Harbours and Others (1970) HCD 182.

(c) Liability for casual delegation

Karisa and Another v. Salanki and another (1969) EA 318

Ormrod v. Crossville Motor Service (1953) 1 WLR 1120

II. Liability in respect of employees

(a) The course of employment

Lloyd v. Grace, Smith and Co. (1912) AC 716, 736 **Century**

Insurance v. Northern Ireland Road Transport (1942) AC 509.

Muwonge v. Attorney-General of Uganda (1967) EA 17

(b) Relevant factors in determining whether the act was committed in the course of employment.

(i) Mode of doing the work the employee is employed to do.

Century Insurance v. Northern Ireland Road Transport. (1042) AC 509.

**Muwonge v. Attorney – General of Uganda (supra)
Beard,**

London General Omnibus (1900) 2 QB 530

Kay v. I.T.W. Ltd. (1967) 3 All E.R. 22.

(ii) Authorized limits of time and space

Patel v. Trandree (1936) K.L.R. 8

Mayanja v. Hoima Cotton Ltd., 7 U.L.R. 64

Piovano v. Attorney-General of Uganda

Civil Case No. 373 of 1963 (Veitch p. 84)

Storey v. Ashton (1969) LR 4 Q.B 476

(iii) Express prohibition

Canadian Pacific Ty. Co. v. Lockhart (1942) AC 591

**Limpus v. London General Omnibus (1862) I.H. and C.
526**

L.C.C. v. Cattermoles (1953) 1 WLR 997

Twine v. Bean’s Express (1946) 62 TLR. 155

Young v. Box & Co. (1951) 1 TLR. 789

(iv) Wilful wrong of employee

**Barwich v. English Joint Stock Bank (1867). LR. 2 Ex.
259**

Lloyd v. Grace, Smith and Co. (1912) AC. 716

Morris v. C.W. Martin & Son (1966)1 QB 716

British Road Services v. Arthur Crutchley (1967)2 All E.R. 785

Kisumu Trading Stores v. SHELL (1965) EA. 314

Jinder Singh v. Lukoma Ginneries Ltd.
(1965) EA 355.

III. Employer and Independent Contractor

The employer is not liable merely because an independent contractor commits a tort in the course of his employment: the employer is liable only if he himself is deemed to have committed a tort thus.

(a) authorizing him to commit a tort.

Allis v. Sheffield Gas Consumers Co. (1853) E. B. 767

(b) personal negligence on the part of the employer **Robinson v. Beaconsfield Rural Council** (1911) 2 Ch. 188.

(c) responsibility for the negligent acts of an independent contractor

Salsbury v. Woodland (1970) 1 QB 324.

(d) where the employer is not liable.

Phillips v. Britania Hygienic Laundry (1923) 1 KB 537

Padbury v. Holliday & Greenwood, Ltd. (1912), 28 TLR. 494.

Cassidy v. Ministry of Health (1951) 2 KB 343, at pg. 365.

3. Employers' Liability

The duties which the employer owes at Common Law towards persons he/she employs. These duties are now considerably supplemented by the

vast number of duties which are imposed on employers for the protection of workmen/women particularly in the industrial field.

An employer is liable if an accident is due to his/.her own act or default – this is the employer’s personal liability. Secondly an employer, he/she is also responsible for the acts of the employees in the course of their employment – this is vicarious liability. This distinction has become of less importance where the doctrine of common employment has been abolished.

I. Employer’s Personal Liability

The employer’s duty is threefold:

- (i) provision of a competent staff of men and women
- (ii) provision of adequate material
- (iii) provision of proper system and effective supervision.

Wilsons and Clyde Coal Co. v. English (1938) AC 57, at p. 78 per Lord A.C. Wright.

Speed v. Thomas Lwift (1943) KB 557

Winter v. Cardiff R.D.C. (1950) 1 All ER 819, 822-23.

- (i) Competent staff of men/women

Hudson v. Ridge Manufacturing Co. (1957) 2 QB 348

O’Reilly v. National Rail & Transway Appliances (1966) 1 All ER 499

Black v. Fife Coal Co. (1912) AC 149

- (ii) Adequate plant, equipment and premises.

Wilson v. Tyneside Cleaning (1958) 2 QB 110

Rose v. Associated Portland Cement Manufacturers (1964) 1 WLR 788

Pearce v. Round Oak Steel Works Ltd. (1969) 1 WLR 595

Davie v. New Merton Board Malls (1959) AC 604.

- (iii) Safe System of Work
 - Speed v. Thomas Swift** (1943) KB 557, 563-564
 - Winter v. Cardiff R.D.S.** (1950) 1 All E.R. 819
 - Hawkins v. Tan Ross (Castings)** (1970)1 All ER 180
 - Mankuleiyo v. Otis Elevator Co.** (1969) EA 568
 - General Clearing Contractors v. Christmas** (1953) AC 180.
 - Qual v. Haynes** (1959) AC 743

N.B. An employer’s personal liability will only arise where the employee’s injuries were sustained during the course of his/her employment. Cases in Vicarious Liability on this point should be noted.

II. Employer’s Vicarious Liability

(doctrine of common employment.

- Priestly v. Fowler** (9037) 3 M & W. 1
- Hutchinson v. York and Newcastle Ry.** (1850) 5 Ex. 343
- Lancaster v. L.P.T.B.** (1948) 2 All ER 796
- Speed v. Thomas Swift** (1943) KB 557, at p. 569
- Howells, “Priestly v. Fowler and the Factory Acts”** (1963) 26 MLR. 367
- Johnson v. Lindsay & Co.** (1891) AC. 371
- Radcliffe v. Ribble Motor Services** (1939) AC. 215
- Nzarirehe v. Kagabaire** (1968) EA 177

4. Workmen’s Compensation Act.

Tanzania Cap. 263 (as amended)

The Act provides for compensation to workmen for injuries suffered in the course of their employment. The compensation paid is not based on fault (negligence) of the employer.

Although the Act needs substantial amendments, it nevertheless provides a better protection for the employees than the common law rules. The Act is heavily weighed in favour of the employee, e.g. S. 25B

- (1) compensation for injury.
S. 5(i) (v).
- (2) Course of employment.
S. 5(2).
Compare this with vicarious liability. See **Ali Mahdi v. Abdulla Mohammed**, (1961) EA 3, **Virani v. Dharamsi** (1967) EA 132.
- (3) Compensation payable, amount payable for a particular injury, methods of calculating, etc. ss. 6-12
Patel v. Patel [1964] EA 55
- (4) Notice of the accident s. 13
- (5) Out of court settlement s. 15 (T).
Abdula v. Rudnap Zambia Ltd, (1971) EA 427
- (6) Determination of claim
s. 3(i) (T).
s. 16
Ali Mahdi v. Abdulla Mohammed, (1961) EA 83
- (7) Jurisdiction of the Court
s. 22 (T)
- (8) Independent Contractors
s. 22 (T)
- (9) Compare this with vicarious liability and Joint tortfeasors.
- (10) Common Law rights.
s. 24 (T)

Can this section be said to have abolished the doctrine of common employment?

Abdula v. Rudnap Zambia Ltd, (1971) EA 427; **Patel v. Patel** [1964] EA. 55

N.B. The Act also provides for compensation for occupational diseases.

TOPIC FOUR: THE LAW BETWEEN NEIGHBOURS

1. Nuisance
2. Liability for Dangerous Things
3. Animals:
 - (i) Cattle - Trespass
 - (ii) Liability under *Scienter* Action

Readings

1. Winfield Jolowicz (11th Bd.) 352-472
2. Fleming on Torts (1977) 314-353
3. Friedman, "The Rise and Fall of Rylands v. Fletcher"
(1956) 34 *Can B. Rev.* 810-823
4. Prosser, *Selected Topics in the Law of Torts*. Ch. 3
5. Huaraka pp. 267-275 and 279-284
6. Williams, G. "Non-natural Use of Land" (1973) *CLJ* 310
7. The Fire Prevention (Metropolis) Act, 1774
The Grass Fire (Control) Cap. 135
The Animal (Pounds) Cap. 154.

Cases:

1. **Rylands v. Fletcher** (1868) LR. 3. 330.
2. **Read v. Lyons** (1946) AER 471
3. **Richards v. Lothian** (1913) AC. 263
4. **Bandali v. The Commissioner of Transport** (1969) HCD n. 293
5. **Salim Omari v. Jackton Ongea** (1972) HCD n. 145
6. **Peter v. Prince of Wales Theatre** (1942) 2 AER 533

7. **Smeaton v. Ilford Corps** (1954)1 AER 9 23
8. **Yahi Bicoli v. Eliangiringa Matemba** (1971) HCD n. 420
9. **Ruzebe Sweya v. Jacob Kitale** (1968) HCD n. 407
10. **Hussein Kijuu v. Bura Lesse** (1967) HCD n. 21
11. **Cummings v. Granger** (1977)1 AER 104
12. **Endoshi v. Lema** (1971) HCD n. 415
13. **Charlesworth v. Naraiyi Rawji** (1868-1918) ZLR 186
14. **Nurdin Abdulhussein v. South British Insurance Co. Ltd.** (1952) 17
ACA 82.
15. **Kitamirika v. Mutagubya** (1963) EA 443
11016. **Arima & Others v. Harial** (1974) EA 557
17. **AG. V. K. Mambula** (1959) E. 665.

Articles:

1. Winfield, "Nuisance as a Tort" (1931) *CLJ* 189
2. West W.A., "Nuisance or Rylands v. Fletcher," (1966) 30 *Conveyancer*,
3. Noel, D.W. "Nuisances from Land in its Natural Condition 56 *Harv. LR.*
772
4. Newalk, "The Boundaries of Nuisance," (1949) 65 *LQR* 480

TOPIC FIVE: DEFAMATION

1. Distinction

YOUSSOUPOFF v. MGM [1934] 50 TLR 581

DEFAMATION Act 1952, S.1

LALOBO v. LIKIDI, [1969] Veitch, p. 135

1. Slander actionable perse

- (a) **Imputation of Criminal Offence**
Odongkara v. Astles 1970 EA 374
RWEKANIKA v. BINAMUNGU [1974] E A 388.

- (b) Imputation of unchastity
Slander of Women Act 1891

VERA FLORENCE CORNELIUS v. W. MARINAGIJA
[1934] 1 TLR 492

- (c) **Imputation of disease**
(d) Office, profession or business
JONES v. JONES [1916] Act 481
LEONARD SAWE v. LDS Nyakiyi 1976 LRT n. 21

3. **Proof of Special Damags for Slander**

ESTON MWAIPOPU v. S. MANYAFU [1969] H.C.D. n.92

B. **DEFAMATORY MATTER**

1. Meaning of Defamatory
SDM v. STRETOH [1936] 2 A.E.R. 1237.
CAPITAL & COUNTRIES BANK v. HENRY [1882] 7 App.
Cas. 771.
FRANK MANDALOI v. PETRO MWAMTOBE [1973]
C.D.A.303
&
KIWANUKA v. Hon. A.M. OBOTE ANOR [1965] E.A.. 146.
VALENTINE M. EYAKUZE v. EDITOR of SUNDAY NEWS
OTHERS, 1974 LRT n. 99
2. Law/Fact
Capital & Countries Bank (Supra)

3. Innuendo
 - (a) False or “Popular” Innuendo
LEWIS v. DAILY TELEGRAPH, [1964] A.C. 234
 - (b) Legal or “true” Inuendo
CASSIDY v. DAILY MIRROR [1929] 2 K.B.
THAKERS LTD. v. BERNARD G. CHATUNGUHELO
[1965] E.A. 82

C. **REFERENCE TO THE PLAINTIFF**

- HUITON v. JONES** [1910] A.C. 20
H. NDEYE SINARE V. DEOD T. PAU [1966] HCD n. 323
ONAMA v. UGANDA AGUE LTD. [1966] E.A. 92
Members of a Class
KMUPPEER v. LONDON EXPRESS [1944] A.C. 116
KIGOZI V. The Hon. A. MAYANJA [1965] E.A. 143
A.S. MASKINI v. JOE RODRIQUE ANOR 1975 LRT. N. 65

D. **PUBLICATION**

- PEEIEFER V. STIFFENS**, I TLR (REVD) 178
Theaker V. Richardson 1962 1 W.L.R. 151.

E. 1. Justification

- Defamation Act S. 5
FRANK MAREALLE v. FUNE GIMWALLA [1971] H C.D.
329
JOHN HAMISI v. BAIFAA s/o PAUL [1966] HC.D 341

2. FAIR COMMENT

- (a) Must be comment on facts
Defamation Act S.6

**The Publishers of Munyanyozi v. The Lukikiko of
Buganda** 3 ULR 124

(b) Must be honest

THOMAS v. BRADBURY, AGNEW & SONS, (1906) 2
K.B. 626

(c) Public Interest

ADOKO NEKYON v. TANGANYIKA STD. LTD.
[1964] E.A. 148

3. Absolute Privilege

a) Parliamentary Proceedings

b) Parliamentary Papers

c) Judicial Proceedings - **Royal Aquarium, etc. Society v.
Parrinson** [1892] 1 Q.B.431; **MANDA VIA V.MANGAT
& OTHERS** (1954) K.L.R.68; **MASHAM SULEMAN
LTD. v. N.R. SAYANI** [1963]; **E.A. 603 NKULU v.
MKUNGILE**, (1972) H.C.D. n. 7

d) Reports of judicial proceedings

e) Official Communications

CHAITERTON v. Sec. Of State for India, (1895) 2 Q.B.
189

(f) Solicitor and client?

MINTER v. PRIEST, [1930] A.C. 558

4. Qualified Privilege

(i) Public Interest

(ii) Statements in Performance of duty

Watt v. Longadon, (1930) 1 K.B. 130

RWEKANIKA v. BINAMUNGU, (1974) supra.

(iii) Statements in Protection of a private Interest

CHIMALA STORES v. 2 TRS LTD. 1970 H.C.D. n. 232

- (iv) Common Interest
Puri v. The Kenya Farmers' Assoc. (Co-op) Ltd.
(1946-47 II K.L.R. 1.
VALENTINE EYAKUZE v. EDITOR of SUNDAY
NEWS & OTHERS (supra).
 - (v) Malice
 - a) Evidence
Hasham Suleman Ltd. v. N.R. Sayani (Supra)
Chimala Stores v. 2 TRS (Supra)
 - (b) Joint liability
Tanganyika Transport V. Nooray [1961] E.A. 55
- F. DAMAGES**
VALENTINE EYAKUZE V. Editor OF Sunday News
& Others. (1974), (Supra)

TOPIC SIX: EFFECT OF DEATH ON TORT LIABILITY

1. (i) Death as a ground for liability
- (ii) Survival of causes of action
- (iii) Joint Tortfeasors

Reading: Law Reform (Fatal Accidents and Miscellaneous Provisions)
Ordinance, 1955, Cap. 360.

TOPIC SEVEN: GOVERNMENT LIABILITY

1. Crown Immunity against tort action
2. The Government Proceedings Act, 1967
3. Liability of the government for wrongs committed by its servants while performing statutory duties.

Readings

1. Street, *Government Liability*, Cambridge U.P., 1953
2. Hogg. P.W., *Liability of the Crown in Australia, New Zealand and the United Kingdom*.
3. Glanville Williams, *Crown Proceedings*, (1948)
4. Bell, P.M. *Crown Proceedings*, Sweet & Maxwell (1948)
5. Fleming, *Law of Torts*, Ch. 22.
6. Winfield, *Law of Torts*.
7. Wambali, M.K.B., "Tort Liability of the Government Against Individual Claimants" LL.M. Dissertation, East Africana Section, University Library.

ARTICLES

1. Treitel, "Crown Proceedings: Some Recent Developments," (1957) *Public Law* 321
2. Street, H., "Tort Liability of the State" (1947) 47 *Mich. LR.* 341.
3. H.J. Laski, "The Responsibility of the State in England," (1919) 32 *Harv. LR.* 442.
4. Tennant, "Servants of the Crown" (1932) 10 *CAN. LR.* 15
5. *The 1st Report of the Law Commission of India – LIABILITY OF THE STATE IN TORT*, 1956, Government of India, Ministry of Law.

TOPIC EIGHT: FAMILY TORTS

- (i) Seduction
- (ii) Adultery
- (iii) Enticement, etc.

Readings

1. *Winfield on Tort*, (10th Ed.) pp. 439-443
2. *Fleming on Torts* pp. 635-66
3. Huaraka, pp. 289-295

Cases

1. **Ali Yusufu v. Chief Makongoro** (1930) TLR. 64
2. **Chono v. Bulamwa** (1971) HCD. N. 320
3. **Halfan Salum v. Hanifa Kondo** (1969) HCD.
4. **Mwalwange v. Mwalwajo** (1972) HCD.
5. **Said Sefu v. Aidan Mwambeta** (1969) HCD.
6. **Yahaya Abeidi v. Mrisho Hussein** (1976) LRT. 56

Dr. Michael K.B. Wambali
Subject Lecturer

October, 2002.

FACULTY OF LAW
DEPARTMENT OF ECONOMIC LAW

LW 543: LAW OF NEGOTIABLE INSTRUMENTS
COURSE OUTLINE

OBJECTIVE

This course is intended to

- (i) equip students with knowledge relating to paper based mode of payment – bills of exchange, cheques and promissory notes;
- (ii) introduce students to technical aspects of payment through negotiable instruments;
- (iii) make students understand the importance of effecting payments by using negotiable instruments.

PRE-REQUISITES

LW 101: Law of Contract and LW 503: Banking

DURATION

1 Semester Course (15 weeks)

EXAMINATION

1 timed Test	20%
End of Semester Exam	<u>80%</u>
	100%

Course Content

A. Statutes

1. The Bills of Exchange Ordinance, Cap. 215
2. The cheques Act 1969, No.3 of 1969 (Tz)
3. The Cheques Act 1968, No. 41 of 1968 (K)
4. Similar legislation for Uganda and Kenya

B. Books

1. *Byles on Bills of Exchange* by M. Megrah & F. Ryder, Sweet & Maxwell (latest ed.)
2. *Chalmers on Bills of Exchange* by David A.L. Smout, Stevens & Sons, London, (latest ed.)
3. Holden, J.M. *History of Negotiable Instruments in English Law*
4. Richardson, D., *Guide to Negotiable Instruments and the Bills of Exchange Acts*, Butterworths, (latest ed.).
5. McLoughlin, *Bills of Exchange, the Bill, the Parties and their Liabilities*

C. Manuals

1. S. Picciotto, *Negotiable Instruments in East Africa, Text and Materials*
UDSM

Part 1: General introductory materials

- 1.1. Development of negotiable instruments as part of the Law Merchant
- 1.2. Equity and the development of negotiable instruments

Readings:

- (a) Prof. J.L. Kanywanyi: “Negotiable Instruments: Some Basic Definitions, Principles and Rules.”
- (b) Dr. N.N.N. Nditi: “Negotiable Instruments: Some Background Information.”

- (c) Picciotto, S.: “Negotiable Instruments in East Africa: Text and Materials,” Chpt. 1.

Part 2: The Form of the Instrument

2.1. Definitions

- Bill of exchange – s.3 Bills of Exchange Ordinance Cap.215 (B.E.O)
- Cheque – s.73, B.E.O.
- Promissory note – s.84, B.E.O

2.2. Analysis of the definitions

A. Unconditional Order or promise to pay – ss.3 & 84 BEO

Cases:

- *Lombard Banking v. Vithaldas Gorhandas* [1960] E.A. 345 (Ug.H.Court)
- *Ismail v Jivraj* [1965] E.A.550
- *Bickos v. Gallanos* (1942) I.T.L.R. ® 599
- *Roberts & Co. v. Marsh* [1915] I.K.B. 42 (C.A)
- *Pindi Das Ghai v. V.P. Mandal* (1947) 23(1) K.L.R.

B. Amount payable – sum certain in money – s.9 BEO – payment must be made in legal tender.

Cases:

- *Plateau Hotel Ltd. v. Mitchell* (1924) 10 K.L.R. 76
- *Syndic in Bankruptcy of Salim Nasrullah Khoury v. Khayat* [1943] A.C. 507 (P.C) (Appeal from the Supreme Court of Palestine)

C. When payable – certainty as to time of payment – ss.3, 73, 84(1) 10(1) and 11 .

Cases:

- *Williamson v Rider* [1963] I.Q.B. 89
[1962] 2 All E.R. 268

D. To whom payable – certainty as to payee – ss.3, 84(1), 7

Cases:

- *North & South Insurance v. National Provincial Bank* [1936] I.K.B. 328.
- *Khan Stores v. Delawer* [1959] E.A. 714
- *Bird & Co. v. Thos Cook & Sons (Bankers) Ltd.* [1937] 2 All E.R. 227.
- *Tuungane Workshop v. Audax Kamala* [1978] LRT n.21.
- *Vinden v. Hughes* [1905] I.K.B. 795.
- *Clutton v. Attenborough* [1897]A.C. 90
- *Bank of England v. Vagliano Brothers* [1891] A.C. 107.

E. Aunthenticity – ss.3, 84(1), 23, 26 B.E.O.

Cases:

- *New Georgia National Bank v. Lippmann* [1928] 60 A.L.R. 1344 (New York Court of Appeals).
- *Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd., etc.* [1968] 2 All E.R. 987.
- *Hamisi Mlezi v. Umoja Printers* [1968] HCD n.350.
- *Nadhan Singh v. Pritam Singh* [1953] 21 EACA 82
- *Suleman Virji & Sons v. Mangaldas* [1914] 5 EALR 154.

F. Liability under forged or unauthorized signatures – Ss.3, 84, 23, 24,53,54,55

Cases:

- *Greenwood v. Martins Bank Ltd* [1933] A.C. 51
- *Tai Hing Cotton Mills Ltd v.Liu Chong Hing Bank Ltd and others* [1985] 2 All E.R. 947 (P.C.)

G. Incomplete instruments – Ss.3(4); 10(1); 12, 20, 45(d) 55(2); B.E.O.

Cases:

- Griffiths v. Dalton* [1940] 2K.B. 264
Baxendale v. Bennet [1878] 3 Q.B.D.525

NBC v. Allidina [1969] E.A. 89; [1968] H.C.D. n.485.

Herdsmen v. Wheeler [1902] I K.B. 361.

H. Alteration – s.64 B.E.O.

Cases:

- *Hong Kong & Shanghai Banking Corp. v. Lo Lee Shi* [1928] A.C.181.
- *N.B.C v. Allidina* [1968] HCD n.485
(1969) E.A. 89
- *Overman v. Rahemtulla* [1930] 12 K.L.R.131
- *Forster v. Driscoll* [1929] IKB 470
- *Koch v. Dicks* [1933] I K.B. 307
- *Barclays Bank International Ltd. v. Acif Ltd.* [1974] E.A. 37.

Part 3: Use of the instrument as payment

3.1. Effect on a debt of payment by instrument

- (a) Monetary obligations to be settled in legal tender – ss.29 & 31 Bank of Tanzania Act, 1995.
- (b) Acceptability of negotiable instruments as payment
- (c) Advantages of use of instrument as payment
 - Kanywanyi's paper pp.3-4
 - Nditi's paper pp1-2
 - Lord Chorley, *Law of Banking* p. 47.
- (d) Effect on a debt
 - Sheldon p.14
 - *Chitty on Contracts* 20th Ed. P.291-2

Cases:

- *Kitale Auto Garage v. M.K. Samnani* [1955] 28 KLR 29
- *Manji Kholabahi v. Sohan Singh* [1957] E.A. 291
- *Kamrudin Mohamed v. Jinja Co-op Society Ltd* [1957] E.A. 443.

- *Shah Mohamlal Karamshi v. Rahemtulla Punja* [1949] 23(2) K.L.R. 50.
- *Karsan v. Bhogal* [1952] 20EACA 74
- *Irene Grogan v. Naphoo Jiwa* [1931] 4 U.L.R.19

3.2. Rights on the instrument as between immediate parties – ss.2, 21, 27, 30 and 38 B.E.O.

Cases:

- *Tuungane Workshop v. Audax Kamala* [1978] LRT n.21
- *Nanalal Vrajdas v. Chunilala Dhanji Mehta* [1946] 13 EACA 54
- *Kilonzo wa Kanyanya v. Odharji Purshotan & Bros.* [1934] 16(1) K.L.R.44.
- *Patel Bros. Hasmani* [1952] 19 EACA 170.
- *Lombard Banking Ltd. v. J.L. Gandmi* [1965] E.A. 12

3.3. Negotiation – Ss.8, 31, 32, 34, 35, 36 B.E.O.

Cases:

- *Hibernia Banking Ltd. v. Gysin & Hanson* [1939] 1 All E.R. 166
- *Crouch v. Credit Foncier of England* [1873] 8 QB 374.
- *Arab Bank Ltd. v. Ross* [1952] 2 Q.B.216
- *Daniel Meyer v. Makali Cycle Mart* [1954] 25 EACA 26
- *Smith v. Clarke* [1794] 170 E.R. 320
- *Nika Singh v. Dewa Singh* [1938] 18(1) K.L.R. 3

3.4. Holder in due course and Lesser Holders – Ss.2, 27, 29, 30, 38.

Cases:

- *Gill v. Cubitt* [1824] 107 E.R. 806

- *Hussein Ali Nathoo v. Yusufali Hashim Alibhai* [1929] 4 Z.L.R. 100.
- *Sirley v. Tanganyika Tegry Plastics* [1968] E.A. 529.
- *Jones v. Gordon* [1877] 2 App.Cas.616
- *Patel v. Mawji Govind* [1939] 18(1) K.L.R. 95
- *N.S. Rawal v. Rattan Singh Thakkar Singh* [1956] 29 K.L.R. 98.
- *R.E. Jones Ltd. v. Waring & Gillon* [1928] A.C. 670.

Part 4: Liability on the instrument

4.1. Acceptance – Ss.53, 17, 18, 19, 39, 40, 41, 42, 43.

Cases:

- *Guggenheim v. Rajguru* [1953] 7 U.L.R. 55

4.2. Payment in due course

(a) Presentment – ss.45, 46, 52, 74, 87, 88

Cases:

- *Walji Hirji v. Cassam Noormohamed* [1926] 10 K.L.R. 103.
- *Patel v. Manji Govind* [1939] 18(2) K.L.R. 95.
- *Kanjeer Naranjee v. Khan & Bhalla* [1952] 26 K.L.R. 9

(b) Liability of Acceptor and Maker– Ss.54, 89.

Cases:

- *Price v. Neal* [1762] 97 ER 871

(c) Duties and rights of drawee – ss.59(1) 60, 75

Cases:

- *Auchteroni & Co. v. Midland Bank Ltd* [1928] 2 K.B. 294
- *Charles v. Blackwell* [1877] 2 C.P.O. 151.

4.3. Payment for honour and discharge – ss.57, 61, 62, 63, 65, 66, 67, 68.

Cases:

- *RixL & Edwards Ltd v. The African Overseas Trading Co.*
[1951] 2 T.L.R. ® 152.

4.4.Dishonour and contingent liabilities

- (a) Dishonour, Notice and Protest – ss.47, 48, 49, 50, 51.

Cases:

Govind Ukeda Patel v. Dhanji Nanji [1960] E.A. 410 (K)

Abdul Aziz v. Pioneer Agencies Ltd [1957] E.A. 479.

- (b) Liability of drawer and Indorser – ss.55

Cases:

North and South Wales Bank Ltd. v. Macreth [1906] A.C. 137.

Bank of England v. Vagliano Bros.

4.5.The Collecting Bank – holder for value?

holder in due course? – Ss. 27, 29

Cases:

- *Standard Bank v. Mohamali Nanji Dunderji* (1936) 1 T.L.R. ® 592
- *A.L. Underwood Ltd. v. Bank of Liverpool* [1924] 1 K.B. 175.

By: Dr. N.N.N. Nditi

Senior Lecturer in Law

2001/2002

UNIVERSITY OF DAR ES SALAAM

FACULTY OF LAW

DEPARTMENT OF LEGAL THEORY

JURISPRUDENCE

COURSE OUTLINE

1. The Subject-Matter of Jurisprudence

1.1 Philosophy:

- (a) History
- (b) Subject-Matter
- (c) Theory of Knowledge (Epistemology)

1.2 Jurisprudence, Legal Theory or Legal Philosophy: Place and Function.

- (a) Functions Ideological and Technical (e.g. definition of law; protection and perpetuation of internal consistency, Universality, certainty, predictability etc; conceptual structures in relation to philosophy and class world outlook, etc).
- (b) Legal Education.

Readings:

A. Books:

- (i) Lloyd, Introduction to Jurisprudence, 4th ed., Stevens and Sons. 1979. pp. 1-78 (Chpts 1 & 2).
- (ii) Friedmann, W., Legal Theory, 5th ed; Stevens and sons, 1967. pp. 3-92 (Chpts 1-6).
- (iii) Thomson, G. The First Philosophers, London; Lawrence & Wishart et passim.
- (iv) Progress Publishers, Fundamentals of Marxist Leninist Philosophy, (Moscow, 1964) et passim.
- (v) Conforth, M. (3 vols: Dialectical Materialism and the Theory of knowledge.)
- (vi) Jawitch, L.S. The General Theory of Law: Social and Philosophical Problems (Moscow: Progress Publishers, 1981) pp 75-116.
- (vii) Stone, J. Legal System and Lawyer's Reasoning. (London: Stevens and Sons, Ltd; (1964) Chpts 1 & 5.
- (viii) Austin, J. The Province of Jurisprudence Determined. (ed. Hart, Wedenfield & Nicholson, (1954) Hart's & Nicholson, 1954) Hart's Introduction.
- (ix) Gover, L.C.B. Independent Africa: The Challenge to the Legal

- (x) Profession Cambridge: Harv: Up.,(1967).
 Luckham, Robin (ed.) Law and Social Inquiry: Case Studies of Research (Scandinavian Institute of African Studies, Uppsala, 1981).

B. Articles:

- (i) Campbell, A. "A note on the word "Jurisprudence" 58 LQR (1942) 334.
 (ii) Summers, R.S. "Legal Philosophy Today-An Introduction in Essays in Legal Philosophy (ed. R.S. Summers. Basil Blackwell Oxford, 1966) Chpt.
 (iii) Hart, H.L.A. "Definition and Theory in Jurisprudence" 70 LQR (1954) 37.
 (iv) McCormick, D.N. "Law as an Institutional fact" 90 LQR (1954) 37.
 (v) Fuller, L.L. "The Place and Uses of Jurisprudence in the Law School Curriculum" 1 J. of Legal Education 495.
 (vi) Shivji, Issa G. "From the Analysis of forms to the Exposition of Substance: the Tasks of A lawyer Intellectual" 5 (1-2) EALR (1972) 1-8.
 (vii) Bridge, J.W. "The Academic Lawyer: Mere Working Mason or Architect" 91 LQR (1975) 488.
 (viii) Twining, W. "Legal Education within East Africa" in East African Law Today, (Lond: Stevens 1966).
 (ix) Marvey, C.P." A Job for Jurisprudence" 7 Mod. L.R (1944) 42.
 (x) Freeman, A. "Truth & Mystification in Legal Scholarship" 90 Yale L.J. (1981) 1 1980.
 (xi) Rosenblatt, R. "Legal Theory and Legal Education" 79 Yale L.J. (1970) p.1205.
 (xiii) Kisanga, R.H. "The Lawyer and the Society: The Challenge of the Professional and the Academic Lawyer in Tanzania" Lecture Delivered at UDSM on 2nd Nov. 1983. (Mimeo, Faculty of Law).

2. Trends in Jurisprudence

General Readings:

A Books

- (i) Lloy'd, Chpts. 3 - 10, pp.79 - 814.
 (ii) Friedmann, Chpts. 7 - 30, pp. 95 - 397.
 (iii) Finch, J.D. Introduction to Legal Theory (2nd ed.) London: Sweet and Maxwell - 1974) Chpts. 2-9.
 (v) Pound, R., Jurisprudence (West Publishing Co. 1959)Chpt. 1.
 (vi) Marris, J.W., Legal Philosophies (London: Butterworths, 1980) Chpts 1 - 4, 6 - 9, 14, and 17 - 19.

B. Articles.

- (i) Issacs, N., "The Schools of Jurisprudence" Harv. L.R. (1917-18) 375.

2.1 Natural Law.

2.1.1 Historical Forms:

- (a) Ancient and Slave Societies
- (b) Feudal Society
- (c) Capitalist Society
 - Transition
 - Consolidation
- (d) Contemporary Natural Law
 - reactionary tendencies
 - progressive tendencies

2.1.2 Conceptual Framework:

- (a) Major Theses
- (b) Concepts: State and Law; Morality and Law; Justice; Rights & Duties etc.
- (c) Obligation to Obey/Civil Disobedience.

Readings:

A. Books:

- (i) Childe, G., *What Happened in History*, pp. 211-217.
- (ii) Needham, J., *Science and Civilisation in China*, Vol.2 (1956) Chpts. 18.
- (iii) Sabine, G.H., *A History of Political Theory* (3rd ed., Harrap & Co. Ltd., 1965).
- (iv) Jolowicz H.F., *Historical Introduction to Roman Law* (3rd ed. 1972).
- (v) Fuller, L.L. *The Morality of Law* (1963) *et passim*.
- (vi) Tumanov., *Contemporary Bourgeois Legal Theories*.

B. Articles.

- (i) Read various articles especially in the *Natural Law Forum*, a leading Journal on Matters Concerning Natural Law.
- (ii) Fuller, L.L. "Positivism and Fidelity to Law" 71 *Harv. L. Rev.* (1958) 630.

2.2 Utilitarianism and Analytical Positivism.

2.2.1 Utilitarianism and the rise of Bourgeois rule

2.2.2 Analytical or Positivist Jurisprudence

2.2.3 The Crisis of Positivist Theory.

- (a) H.L.A. Hart's *Concept of Law* and the answer by Fuller.
- (b) Contemporary debate - Dworkin, Summers, Raz, Lyons, Finnis, McCormick, Honore etc.

2.2.4 General Critique.

Readings:

A. Books:

- (i) Stephen, L., The English Utilitarians (Luckworth & Co. 900) pp. 317 - 336.
- (ii) Lyons, D.B. In the Interest of the Governed: A Study of Bentham's Philosophy of Utility and Law (Oxford Clarendon Press 973) Chpts. 6 - 7
- (iii) Bentham, J. Laws in General (ed H.L.A. Hart the Athlone Press Lord, 970).
- (iv) Austin, J. Lectures on Jurisprudence (5th ed., R. Campbell, John Murray, 1885) Chapt. 1 - 6.
- (v) Id., The Province of Jurisprudence Determined (ed., H.L.A. Hart, Weidenfel & Nicholson, 1954).
- (vi) Hart, H.L.A., The Concept of Law (Oxford: Clarendon Press, 1961) Chpts, 2 - 4.
- (vii) Raz, J., The Concept of a Legal System (Oxford: Clarendon Press, 1970; 2nd ed. 1980) Chpts. 12.
- (viii) Fuller, L.L., The Morality of Law (Yale U.P., 1969).
- (ix) Dworkin, R.M. Taking Rights Seriously (Buckworth 97).
- (x) McCormick, N., Legal Reasoning and Legal Theory (Oxford: Clarendon Press)
- (xi) Hacker, P. & Raz J. (eds) Law Morality and Society: Essays in Honour of H.L.A. (Oxford: Clarendon Press, 1977).
- (xii) Lloyd, Chpt. 4.
- (xiii) Friedman Chpts. 21 - 23.
- (xiv) Tumanov, Ch. 2.

B. Articles:

- (i) Hart, H.L.A., Essays on Bentham: Jurisprudence and Political Theory (Oxford OUP, 1982) (These essays appear elsewhere.

For example, "Bentham on Legal Powers". (1971-72) 81 Yale L.J. 799; "Bentham and the Demystification of the Law" 36 MLR (1973) p.2; "Bentham on Legal Rights", in Oxford Essays in Jurisprudence (2nd Series) Chpts.7; etc).
- (ii) Hart H.L.A., "Positivism and the Separation of Law and Morals" 71 Harv. L.R. (1957-58) p. 593.
- (iii) Summers, R.S. Professor H.L.A. Hart's Concept of Law (963) Durham L.J. 620.
- (iv) *ibid.* "The New analytical Jurists" KHR (1966) p. 26 Exempts in Lloyd (4th ed).

2.3 Historical Jurisprudence.

2.3.1. The Social Origins of Historical Theories of Law.

2.3.2. The Conception, Scope and Function of Law under Historical Theories.

2.3.3. Contemporary Manifestations and general critique.

Readings:

A. Books:

- (i) Lloyd, Chpt. 9
- (ii) Friedman Chpts. 18 - 19
- (iii) Stein, Peter, *Legal Evolution: The Story of an Idea* (Lond: C.U.P., 1980).
- (iv) Von Savigny, F.C., *On the Vocation of Our Age for Legislation and Jurisprudence* (2nd ed., trans. A. Hayward Littlewood & Co. 1831).
- (v) Puchta, G.P. *Outlines of the Science of Jurisprudence*, Trans. W. Mastre T. & T. Clark, Edinburgh, 1987)
- (vi) Maine, R.S., *Ancient Law* (Ed. F. Pollock. John Murray, 1930).
- (viii) Summer, W.G. *Felloways: A Study of the Sociological Importance of Usages, Manners, Customs, Mores, and Morals* (paston Ginn & Co. The Athenae Press 1907.
- (vii) Carter, J.C., *Law: Its Origin Growth and Function* N.Y. G.P. Putman Sons.

B. Articles:

- (i) Campbell "Fascism and legality" 62 LQR (1946) p. 141.
- (ii) Kantorowics, H.U., "Savigny and the Historical School of Law" 53 LQR (1937) p. 326.
- (iii) Steiner, H.A., "The Fascist Conception of Law" 36 Col. L.R (1936) 1267.
- (iv) Stone, J. "Theories of Law and Justice of Fascist Italy" 1 MLR (1937) p. 177.

2.4 Sociological and "Realist" Theories.

2.4.1 Social Origins of Sociological and Realist Theories.

2.4.2 The Conception Scope and Function of Law under Sociological and Realist Theories:

(a) The European Trends:

- Germany: Rudolf Von Ihering, Ehrlich, Weaver etc.
- France: Durkheim, Duguit, Geny etc.
- Scandinavian Realists: Hagenstrom, Olivercrona, Lundstedt, Ross, Castberg, etc.

(b) The American Approaches:

- Sociological Roscoe Pound, Benjamin Cardozo, M. Cohen, etc.
- Realists: C.C. Gray, O.W. Holmes, John Dewey J. Frank, Karl etc.

(c) Contemporary Development.

- Sociology of Law
- Anthropology of Law.
- Jurimetrics.
- Behaviouralism.
- Manifestations in 3rd World Countries (e.g. R. Seidman's Thesis on "Social Engineering").

2.4.3 Critique of Sociological Legal Theory.

Readings:

General:

A. Books:

- (i) Lloyd, Chpts.
- (ii) Friedman, Chpts. 20 - 25.
- (iii) Tumanov, Chpts. 3
- (iv) Hunt, Allan The Sociological Movement in Law (Philadelphia: Temple 1979)
- (v) Dicey, Law and Public Opinion in England (2nd ed. 1914).
- (vi) Lenin, Imperialism: The Highest Stage of Capitalism (Moscow, 1974.)

B. Articles:

- (i) Harvey, C.P., "A Job for Jurisprudence" 7 MLR (1944) 42.
- (ii) Kennedy, W.B. "Another job for Jurisprudence" 8 MLR (1945) 18.

European Trends:

A. Books:

- (i) Von Ihering, R. Law as a Means to an End The book, (Co. 1913).
- (ii) Ehrlich, E., Fundamental Principles of the Sociology of Law (Cambridge: Harv U.P. 1914.
- (iii) Weber, M., on Law in Economy and Society (ed. Max Rheinstein, Cambridge: Harv. U.P., 1954).
- (iv) Durkheim, E. The Division of Labour in Society (1964).
- (v) Duguit, L., Law in the Modern state (Lond. then & Unwin Ltd. 1921).
- (vi) Geny, Francois, Science of Legal Method (4 Vols. 1914 - 1924. Mod. Legal Philosophy Series).
- (vii) Olivacrona, K., Law as Fact (2nd ed., Stevens & Sons. 1971).
- (viii) Rose, A., Towards a Realistic Jurisprudence (Copenhagen: Einar 1946).
- (ix) Castberg, F., Problems in Legal Philosophy 2nd ed., Oslo U.P. Athen & Unwin, Ltd. 1957).

B. Articles:

- (i) Ehrlich, E., "Sociology of Law" 36 Harv L.R (1921. 22)

- p. 129.
- (ii) Hart, H.L.A., "Scandinavian Realism" (1930) *Jur. R.* 93. *C.L.J.* 333.
 - (iii) MaCormack, G. "Scandinavian Realism" (1970) *Jur. R.* 33.
 - (iv) Trubek, D.M. "Max Weber on Law and the Rise of Capitalism 97) *Wisconsin U.P.*

American Trends

A. Books:

- (i) Pound, Roscoe *Jurisprudence* West Publishing Co. 1959.
- (ii) Stone, Julius, *Social Dimension of Law and Justice* (Stevens and Sons, Ltd. 1966).
- (iii) Cordozo, B.N. *The Growth of the Law* (Yale C.P., 1924).
- (iv) Summers, R.S., *Instrumentalism and American Legal Theory*. (Cornell U.P., Ithaca, 1982).
- (v) Rumble, W.E., *American Legal Realism: Skepticism, Reform and the Judicial Process*. (Ithaca; Cornell U.P., 1968).
- (vi) Llewellyn, K.B., *Jurisprudence: Realism in Theory and Practice* (U. of Chicago Press, 1962).
- (vii) Twining, W., *Karl Llewellyn and the Realist Movement*. (Weidenfeld and Nicolson, 1973).
- (viii) Frank, J.N. *Law and the Modern* (Stevens & Sons, 1949).

B. Articles:

- (i) Pound, R. "The Scope and Purpose of Sociological Jurisprudence" 24 *Harv. L.R.* (1910 - 11) p. 591; 25 *Harv. E.R.* (191-12) p. 140).
- (ii) *ibid.*, "Fifty Years of Jurisprudence" 50 *Harv. L.R.* (1936-37) p.557; 51 *Harv L.R.* (1937-38) p.444.
- (iii) Stone, J. "Roscoe Pound and Sociological Jurisprudence" 78 *Harv L.R.* (1964-68)
- (iv) *ibid.*, "Procedures for Settlement of Disputes in 'Simple' Societies" 11 *Irish Jurist, N.S.* 175 - 188 (1976).
- (v) Lyall, A.B., "The Social Origins of Property and Contract: A Study of East Africa Before 1918" *Unpublished Ph.D. Dissertation*, London Univ. 1980.
- (vi) Snyder, F.G., "Anthropology, Dispute Processes and Law: A Critical Introduction" 892) *British J. of L. and Society* 141 - 180 (1981).

2.5 The Pure Theory of Law.

2.5.1 Crisis of Positivism and the Origins of the I.T.L.

2.5.2 The Pure Theory of Law

- (a) Conceptual Foundations/Structure.
- (b) Application of the P.T.L.

2.5.3 The Critics of Kelsen.

Readings:

A. Books:

- (i) Lloyd, Ch. 5
- (ii) Friedman, Ch. 24
- (iii) Kelsen, H., General Theory of Law and State (Trans. A. Wedberg, Harv. U.T., 1949).
- (iv) *ibid.*, What is Justice? (Univ. of California Press (1951).
- (v) *ibid.*, Pure Theory of Law (Univ. of California Press 1987).
- (vi) Raz. J., The Concept of a Legal System (Oxford: The Clarendon Press, 1970; 2nd ed. 1980).
- (vii) *ibid.*, The Authority of Law (Oxford: The Clarendon Press, 1979).
- (viii) Engel, S. & R.A. Metall (eds.) Law State and International Legal Order: Essays in Honour of Hans Kelsen. (Univ. of Tennessee Press. 1984).

B. Articles:

- (i) Kelsen. H. "The Pure Theory of Law" 50 LQR (1934) p. 474; 51 LQR (19) p. 517.
- (ii) Finnis, J.M. "Revolutions and Continuity of Law" in Oxford Essays in Jurisprudence (2nd Series) CUP, 1973).
- (iii) Dias, R.W.M. "Legal Politics Merms Behind the Grundnorm" 26 Cambridge L.J. (1962) L. 293.
- (iv) Oje, A. "The Search for a Grundnorm in Nigeria: the Lukanmi Case" 20 Int. & Como L C.(1971).
- (v) Date-Ban, S.K. "Jurisprudence Day in Court in Ghana" 20 Int. & Comp LQ (1971) p. 311.
- (vi) Eekelaar, J.M. "Principles of Revolutionary Legality" in Oxford Essays in Jurisprudence (2nd Series) (1973).
- (vii) Lyer, T.K.K. "Constitutional Law in Pakistan: Kelsen in the Courts" 21 American J. of Comp. L. (1973) p. 759.
- (viii) Jones, J.W. "Modern Discussions of the Aims and Methods of Legal Science" 47 LQR (1931) p. 62.
- (ix) Brookfield "The Courts, Kelsen and the Rhodesian Revolution" 19 Univ. of Toronto L.J. (1969) p. 326
- (x) Mukoyogo, M.O., "A Critique of Hans Kelsen's Pure Theory of Law" 7 Dar es Salaam U.L.J. 191 - 243 (1978).

2.6 The Marxist Theory of State and Law.

2.6.1 History.

2.6.3 Contemporary Developments and Critiques vis-à-vis Historical Experiences of Socialist State and Law, and Socialist Legality.

Readings:

A. Books:

- (i) Lloyd, Chpt. 10
- (ii) Friedman, Chpt. 29.
- (iii) Marx, K., Preface to Contribution to the Critique of Political Economy. 1 M & ES p. 502 - 506 (Moscow, pp. 1973).
- (iv) Engels, F., The Origin of the Family Private Property and the State 3 M & ESW 191 - 334 (Moscow. pp. 1976)
- (v) Marx, K., The Civil War in France 2 M & ESW 178 - 244 (Moscow, pp 1975).
- (vii) Mao Tse-Tung Four Essays on Philosophy (Peking, F.L.R. 1972).
- (viii) Conforth, Maurice. Historical Materialism.
- (ix) Cain, M. & Hunt, A., Marx and Engels on Law.
- (x) Renner, Karl., The Institutions of Private Law and their Social Functions. (London: Rutledge.
- (xi) Babb, M.W., (Trans) Soviet Legal Philosophy (20th Century Legal Philosophy Series) Vol.5 (Marv. U.P. 1951).
- (xii) Martin, Robert., Readings on Recent Developments in Marxist and Progressive Legal Theory. (Dar es Salaam, Faculty of Law, UDSM. Mimeo 1920).
- (xiii) Pashukanis, B., Law and Marxism (Land, 1978).
- (xiv) Kairys, D., (ed.), The Politics of Law: A Progressive Critique (1982).

Articles:

- (i) Balbus, L.D. "Commodity form and Legal form: An Essay on the Relative Autonomy of the Law" 11 Law & Soc. Rev. 571 (1977).
- (ii) Greenberg, D. & Anderson, N., "Recent Marxist Books on Law: A Review Essay" 5 Contemporary crises (1981) p. 293.
- (iii) Hepburn "Social Control and the Legal Order" 1 Contemporary Crises (1977) p. 77
- (iv) Jorgenson, S. "Ideology and Science" (1974) S and S.L.: 89.
- (v) Robinson, H.W., "Law and Economics" (1939) 2 M.L.R. 257.
- (vi) Shivji, I.G., "The State in the Dominated Social Formations of Africa: Some Theoretical Issues", Int.

Soc. Sci. s. Vol. XXXII, No.4 1980.

2.7 Contemporary Legal Theories.

2.7.1 Reactionary Developments.

- Neo Positivism.
- Fundamentalism

2.7.2 Progressive Developments.

- Human Rights Crusade/Humanitarian Law.
- Feminist jurisprudence
- National anti-imperialist struggles.
- Critical Legal Studies.
- Parallel Institutions (Informal justice, peoples' Courts, Legal Aid. Public interest Litigation, etc.)

Readings:

Development in this area are mainly tendential, that is, few of these trends are concrete. Readings shall be provided in class depending on which topic is given more focus or attention. However, the following may provide a starting point in this rather amorphous area:

- (i) Tumanov. *Contemporary Bourgeois Legal Theories*, et passim.
- (ii) Hart, H.L.A. Essays in Jurisprudence and Philosophy.
- (iii) Dworkin, Ronald., Taking Rights Seriously (Cambridge Harv. J.P., 1979).
- (iv) Hooker, H.B. Legal Pluralism: An Introduction to Colonial Laws (Oxford, Clarendon Press, 1975).
- (v) Summer, Colin (ed) Criminal Justice and Underdevelopment (London: Heinemann (1982)
- (vi) Livingstone, D. "Note Round & Round the Bramble Bush: From Legal Realism to Critical Legal Scholarship" 95 Harv. LR 1969 (1982).
- (vii) Machinnon, C. "Towards Feminist Jurisprudence" 34 Stanford L.R. 01 (1982).
- (viii) Mazer, L., "The Crisis of Legal Liberalism" 21 Yale L.J. 103 (1972).
- (ix) Trubek, D., "Complexity and Contradiction in the Legal Order: Balbus and the Challenge of Critical Social thought about law" 11 Law and Society R. 527 (1977).
- (x) Piven, F.T., & R.A. Cloward., Poor People's Movements: Why They Succeed, How They Fail. (NY, Vintage Books, 1979).

3. Law and Social Change.

This part aims at studying the mechanics of the Capitalist state and its crisis in Third World Countries.

3.1 Role of Law in influencing Social Change:

- (a) Modernisation Theory
- (b) Legal Transplants.
- (c) Critique.

3.2 Case Studies with Special emphasis on Tanzania.

Readings:

A. Books:

- (i) Marasinghe and Anor, Essays on Third-World Perspectives in Jurisprudence.
- (ii) Burman, S.B. & Marrell - Bond, B.E. (eds.) - The Imposition of Law (NY:Academic Press, 1979).
- (iii) Seidman, R.B., The State, Law and Development (London; 1978).
- (iv) Snyder, F.G., Capitalism and Legal Change (London. 1981).
- (v) Watson, A., Legal Transplants (1974), Edinburgh).
- (vi) Iliffe, S.A., Modern History of Tanganyika (Cambridge: OUT, 1975).
- (vii) Coulson, A. Tanzania: A Political Economy Oxford: Clarendon Press 1982)
- (viii) Shivji, I.G. Class Struggles in Tanzania (Dar: TPH, 1976).
- (ix) Martin, Robert., Personal Freedom and the Law in Tanzania: A Study of Socialist State Administration (Nairobi, OUP, 1974).
- (x) Srivastava, B.P., The Constitution of the United Republic of Tanzania, 1977: Some salient Features Some Riddles: (34 Professorial Inagural Lecture Series, DUP 1985. 1985).
- (xi) Friedland, W.K., Vuta Komba: The Development of Trade Unions in Tanganyika (Stanford: Last Press 1969).
- (xii) Allot, A., The Limits of Law (Lord: Butterworths, 1980)
- (xiii) Shivji, I.G., The State and the Working People in Tanzania (Dakar: Codesria 1985).

B. Articles:

- (i) Seidman R B. "The Reception of English Law in Colonial Africa Revisited" 2 EALR 47 (1969).
- (ii) Id., "Law and Stratification" 3 Contemporary Crises 17 (1979).
- (iii) Raikes, Phillip., "Rural Differentiation and Class Formation in Tanzania" 5(3) The of Peasant Studies 308-310 (1978).
- (iv) Williams, D.V., "The Authoritarianism of African Legal Orders" 5 Contemporary Crises 247 (1981).
- (v) Id., "State coercion against Peasant Farmers" 20 J. of Legal Pluralism 95 (1982).
- (vi) Odeke, A. & Panduka, G. "Can Law Bring Social Change in Africa" 7 Dar U.L.J. 153 (1978).
- (vii) Shivji, I.G., "Semi-Proletarian Labour and the Role of Penal Sanctions in the Labour Law of Colonial Tanganyika (1920-1938) in C. Summer (ad) Criminal, Justice and Underdevelopment (London: H.E.P. 1982).
- (viii) *ibid.*, "Development of Wage Labour and Labour Laws in Tanzania: Circa 1920 - 1964" (Unpublished Ph.D. Dissertation, UDSM, 1982).
- (ix) *ibid.*, "Working class struggles and Organization in Tanzania 1939 - 1975" MAWAZO (Vol. 5, No. 2)
- (x) Kapinga, W.B.L. "Law and the Control of Labour in Tanzania" Paper

- presented at a Conference on The History of Law, Labour and Crime, (Univ. of Warwick England) from 15 - 12 Sept. 1983.
- (xi) Galanter, M. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change" 9 Law & Soc Rev. 95 (1974).
 - (xii) Trubek, & "Toward a Social Theory of Law: An Essay on the Study of Law & Development" 82 Yale L.J. 1 (1972).
 - (xiii) Trubek, D. & Galanter, "Scholars in Self-Estrangement Reflections on the Crisis in Law & Development Studies in the United States" Wisconsin L. Dev. 1062 (1974).
 - (xiv) Coulson, A., "Agricultural Policies in Tanzania" 10 RAPE 74 (1977).
 - (xv) Mapolu, Henry, "Imperialism, the State and the Peasantry in Tanzania" 5(3) MAWAZO 3-17 (1984).
 - (xvi) (xvii) Bernstein, R., "African Peasantries: A Theoretical Framework" 6 J. of Peasant Studies 421 (1979).
 - (xviii) Brietzke, P. "Law and Rural Dev. in Africa" 5 Zambia L.J. (1973).
 - (xix) Bryde, B.O., "The Reception of European Law and Autonomous Legal Development in Africa" 18 Law and State 21 (1978).
 - (xx) Iliffe, J., "Wage Labour and Urbanization" in Kaniki, M.H.Y. (ed) Tanzania Under Colonial Rule (London: Longman 1979).
 - (xxi) Shivji, I.G., "Labour Law and Conditions of Child Labour in Tanzania: 1920 - 1940" IJSL.
 - (xxii) Id., "The Reorganisation of the State and the Working People in Tanzania" Socialism in the World (Beograd: 1984), No. 45 pp. 136 - 178.

4. Judiciary:

- 4.1 The Judiciary, the Legal Profession and its Origins.
- 4.2 Functions and Role.
 - 4.2.1 The Judicial Process and Method:
 - (a) Dispute Settlement
 - (b) Judicial Law - Making.
 - 4.2.2. The Independence of the Judiciary.
 - (a) Independence as a function of the Role of Law.
 - (b) Judicial Ethics.
- 4.3 The Judiciary as the arm of the state, Social instance of the class struggle and relation to Democracy: A Critique.

Readings:

A. Books:

- (i) Lloyd. Chpt.11 "Judicial Process".
- (ii) Friedman, Chpt. 32 "Legal Ideals and Judicial Law-Making".
- (iii) Cardozo, Benjamin., The Nature of the Judicial Process
- (iv) Llewellyn, K., The Common Law Tradition: Deciding Appeals.

- (Little, Brown & Co., 1980).
- (v) Frank, J.N., Courts on Trial: Myth and Reality in American Justice (Princeton U.P. 1949).
- (vi) Roberts, Simon Order and Dispute (MY, St. Martins Press, 1979).

Articles:

- (i) Stone J., "From Principles to Principles Changes in the Function of the Judicial Process and the Law 9. LQR 224 - 284 (1981).
- (ii) Trubek, D. "Studying Courts in Context" 15 Law & Society R. 485 (1981).
- (iii) Lamwai, M.R.M., "The Development of the Administration of Civil Justice in Kenya and Tanzania: A Critical Analysis" (Unpublished Ph.D. Dissertation London (1983).
- (iv) Gulliver, P.H., "Negotiations as Mode of Dispute Settlement: Towards a General Model" V Law and Soc. R. 667 691 (1973
- (v) Felstiner, William, L.F., "Influences of Social Organization on Dispute Processing" 8 Law and Soc. R. 695 - 706 (1975).
- (vi) Seles, Luis "The Emergence and Decline of the Cuban popular Tribunal" 17 Law and Soc. R 587 - 612 (1963)
- (vii) Peter, C.M. & M. Wambali. "The Socio Economic and Political Context of the Judiciary. The Case of Tanzania" (Paper presented at the Workshop on the Role of the Judiciary in Plural Societies Nairobi 30 Jan - 4th Feb. (1985).
- (viii) Shivji, I.G. "Seven Thesis on "Reform and Revolution", Journal of African Marxists, No. 4.
- (ix) "Voluntary Legal Aid in Tanzania, Retrospect and Prospect" TNR, Nos. 90 - 91.

Notes:

- (i) The Outline does not exhaust all issues that may be considered Jurisprudential. For example, the particular treatment of such questions as Morality, Justice, Legal personality, fundamental Legal conceptions (Rights, Duties, Powers, Immunities, etc.), Civil Disobedience vis-à-vis the Obligation to obey the law, etc; are all matters of central concern in Legal Theory. Those may be given attention where specifically referred to by theorists in that trend considered or if time still remain Lecturers may wish to treat them briefly.
- (ii) References indicated in the Outline in most cases are available in the Library. In some cases they are not available. In the case of books, efforts are being made to have the Library acquire them. In the case of Articles, some are in the custody of subject - teachers and arrangements will be made to provide them when resources allow. Otherwise these will just be summarised during Lectures.
- (iii) For Lectures that are following the Curriculum review of 1999 the Content of each topic is in the process of being reworked to include discussions on new issues of theoretical significance: post modernism; ethical impact of the HIV/AIDS Pandemic. Cloning, Stem Cell Research, Euthanasia, Right to Life. Right to Privacy etc.; the ICT Revolution; etc. In the interim period some shift and fluidity in presentation is to be expected before a working version is developed to replace this vintage outline.

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Senior Lecturer
Course Coordinator

TM/ka: