

UNIVERSITY OF ZIMBABWE

(LB206)

**LL.B (HONS) PART II
CIVIL PROCEDURE
(EXAMINATION)**

DECEMBER 2010

3 HOURS

INSTRUCTION TO CANDIDATES

1. Answer all the questions. The marks allocated for the questions are shown in brackets.
2. You may take into the examination room the following:
 - 2.1 Customary Law and Local Courts Act, Chapter 7:05
 - 2.2 Magistrates Court Act, Chapter 7:10
 - 2.3 Magistrates Court (Civil) Rules, S.I. 290/1980
 - 2.4 Maintenance Act, Chapter 5:09

The above must **not** be annotated in any way.

Question 1

- (a) You are a legal practitioner working for a Harare based Women's Rights NGO that provides legal advice and assistance with litigation to women. You are approached by Rutendo Chuma who informs you as follows:

She was born in Pasi village in Chief Chiweshe's area. She grew up in the village and attended the local primary and secondary schools. She did not further her education because of lack of funding. Six (6) years ago she got married to Tawanda Dzikai who is from a neighboring village (Tsoka village). Tawanda was born in Tsoka village and grew up there. He attended the same schools as Rutendo. Tawanda paid lobola for Rutendo but they did not register their marriage. Two children were born of the marriage namely, Chipso (5 years) and Takunda (3 years). They built their own home next to Tawanda's parents' home.

Three (3) years ago Tawanda found employment in Harare. He fell in love with a workmate named Tsitsi. He paid lobola for Tsitsi in

March 2010 and started living with her as husband and wife. He told Rutendo to go back to her parents because he did not want to remain married to a "village woman". Rutendo went back to her parents' home and took the children with her.

Two(2) weeks ago Tawanda went to Rutendo's parents' home and demanded that Rutendo and her parents should allow him to take the children to go and live with him because he paid lobola and "the children belong to their father". They refused. He took the matter to the local primary court and the presiding headman ordered Rutendo and her parents to surrender the children. Rutendo and her parents attended the hearing at the primary court and opposed Tawanda's claim but they were unsuccessful.

(i) What advice would you give Rutendo? Explain your answer fully. **(6)**

(ii) What procedure should Rutendo utilize in order to give effect to the advice referred to in (a) above? **(2)**

- (b) You are a legal practitioner practicing in Harare. A client brings you a summons issued from the Magistrates Court at Mutare in which the plaintiff is claiming payment of USD15 000.00 being arrear rentals for the lease of a shop in Harare. The plaintiff resides in Mutare. The lease agreement was verbal and concluded partly in Mutare and Harare.

What advice would you give to your client? Give full reasons for your advice. **(6)**

- (c) Give two (2) examples of types of claims that have shorter prescription periods than the general three (3) year period provided by the Prescription Act. **(4)**

- (d) What options are available to a defendant in the Magistrates Court who does not wish to oppose the plaintiff's claim in a case where the claim is for payment of money and the defendant does not wish to simply ignore the summons? **(4)**

(20 marks)

Question 2

- (a) You act for a client who is suing the defendant for payment of USD2 000.00 being the purchase price of goods sold and delivered to the defendant. The defendant's legal practitioner has requested for copies of the invoices of the goods sold in terms of Order 12 Rule 107.

Would you give them to her? Give reasons for your answer. **(3)**

- (b) You act for the plaintiff in a case in which she is suing the defendant on a dishonoured cheque. The summons was issued and served on the defendant. The *dies induciae* have expired and the defendant has not entered appearance to defend.

Outline in chronological order the steps that you and/or any other person would have to take in order to obtain final relief for your client. **(6)**

- (c) Give one (1) example of a special plea in abatement. **(1)**

N.B. Marks will be deducted for giving more than one example.

- (d) With reference to the relevant case and statutory authority, briefly discuss the options available to a defendant who does not wish to have summary judgment entered against him/her **(10)**

(20 marks)

Question 3

- (a) Briefly outline the various ways in which a pre-trial conference may be convened in the Magistrates Court. **(5)**

- (b) What remedy is available to:-

(i) a judgment creditor in a case where the judgment has become superannuated. **(1)**

(ii) a defendant in a case where the Plaintiff refuses to produce documents upon request. **(1)**

(iii) a Plaintiff in a case where the Defendant wants to use a document during the trial it did not discover. **(1)**

(iv) a defendant in a case where the Plaintiff neglects to comply with a notice of discovery. **(1)**

- (c) (i) With reference to relevant statutory provisions and case law briefly discuss the application of the concept of privilege in the procedure of discovery of documents. **(2)**
- (ii) What is the essential difference between an interlocutory application and an application proper? **(2)**
- (iii) What is a nulla bona return of service? **(1)**
- (d) What is the Magistrate's authority, if any, to call and recall witnesses? **(2)**
- (e) At what stage (s) in the proceedings may a judgment of absolution from the instance be granted and what test (s) does the court use in deciding whether or not to grant it. **(4)**

(20 marks)

Question 4

- (a) Your client, Bob Save is being sued in the Magistrates Court by Marimberi Chete for payment of US\$1 500 being the balance of the purchase price for a wedding ring he bought for his wife from Marimberi Chete. Bob Save informs you that he has a claim against the Plaintiff, Bob Save, for payment of US\$5 000.00 due under a written acknowledgement of debt. Marimberi Chete and his lawyers are adamant that Bob Save should simply pay the claim in terms of the summons.

Required:

- (i) Outline the procedure you would adopt on behalf of Bob Save. **(6)**
- (ii) What is the effect of closure of pleadings? **(2)**
- (iii) What is the effect of failure to reply to a plea? **(1)**
- (iv) State the requirements of a plea of denial. **(1)**
- (v) What is a plea of confession and avoidance? **(1)**
- (vi) What should a litigant do to rectify a defect where an application for rescission of judgment is made out of time? **(1)**

- (b) Mary Brown of Masvingo town wants to claim maintenance from Jim Gold of Harare for their minor child, Vongai (aged 2 years) at the Harare Maintenance Court. Mary and Jim are not married and have never been married. Jim is employed by a Harare based company.

You are required to highlight the following in respect of Mary's claim:

- (i) The legal basis of Jim's obligation to maintain the child. **(2)**
- (ii) The easiest method that Mary could use to enforce the maintenance order in the event that it is granted. **(2)**
- (iii) The procedure that Mary would adopt to seek an increase in the maintenance payable as the child grows older (and her needs increase) and how Mary would be able to utilize this procedure without the expense of travelling to Harare. **(4)**

(20 Marks)

END OF PAPER