



**MIDLANDS STATE UNIVERSITY**

**FACULTY OF LAW**

**PROCEDURAL LAW DEPARTMENT**

**CIVIL PROCEDURE**

**CODE: LB205**

**MAY/JUNE 2018**

**DURATION: 3 HOURS**

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***INSTRUCTIONS***

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1. Answer *all* questions.
  2. Students may bring *unannotated* copies of :
    - i) The Magistrates Court Act [Chapter 7:10] and
    - ii) The Magistrates Court Civil Rules S.1 290/80.
  3. This paper is worth 70 Marks.
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**Question 1**

Marry issued summons out of the Gweru Magistrate Court on the 01<sup>st</sup> of March 2018. In that summons, she claimed a sharing of property and custody of children. At the same time she filed an affidavit sworn by herself in which she alleged that she had been customarily married to Den Kurai since 2009 and that there were 4 minor children born of the union.

In the affidavit she persisted in her claim for custody of the children and division of the property between the parties.

On the 16<sup>th</sup> of March 2018, she filed an additional affidavit in which she sought to amend her papers by withdrawing stand number 8 Senga from the list of the property to be shared alleging that it belonged to Den Kurai's employer.

Den Kurai did not file any notice of appearance to defend, neither did he file a plea or notice of opposition.

The matter was set down for hearing on the 29<sup>th</sup> March 2018 on which date the parties gave evidence *viva voce* and ultimately the Magistrate granted a judgment in favour of Mary. Den Kurai dissatisfied with the judgment consults you.

- i) Advise him on whether or not the Magistrate Court had jurisdiction to preside over the dispute. **[10 Marks]**
- ii) Further, advise him as to the propriety of the procedure adopted in the matter. **[10 Marks]**

**Question 2**

You represent Cantel who has received a summons claiming damages for wrongful arrest and detention. Everything on the 1<sup>st</sup> page of the summons fully complies with the Magistrate Court Civil Rules. The particulars of claim annexed to the summons read as follows:-

1. "On the 2<sup>nd</sup> of November 2016, the Plaintiff was arrested by 1<sup>st</sup> Defendant, a member of the Zimbabwe Republic Police (Second Defendant)
2. Thereafter, the Plaintiff was detained at Gweru Central Police Station for 10 days at the instance of 1<sup>st</sup> Defendant.

3. As a result of the foregoing, Plaintiff suffered loss in the sum of \$5 000.00

Wherefore Plaintiff claims for payment of \$5 000.00, interest and costs of suit"

List, with reasons, what you identify as errors or omissions with regard to these particulars of claim and in respect of each such error or omission, name the remedy or remedies that the Defendant has. **[10 Marks]**

### **Question 3**

Outline the procedural steps that are involved in a contested Court Application beginning from initiation of proceedings until the relief is obtained (You may assume there is no interlocutory application). **[10 Marks]**

### **Question 4**

You issued summons at the Gweru Magistrate Court against your client's debtor for payment of \$6 000.00 being the sum due in terms of a written acknowledgement of debt. The *dies induciae* has expired and the debtor does not enter an appearance to defend.

i) How would you proceed to obtain judgment for your client? **[6 Marks]**

ii) If the debtor wants to set aside the default judgment what does he have to establish to be successful. **[4 Marks]**

iii) If the application for rescission of judgment is unsuccessful, does the Applicant have a right of appeal? **[2 Marks]**

iv) Outline the procedure of noting an appeal against the judgment/order of the Magistrates Court. **[10 Marks]**

**Question 5**

Briefly distinguish between *orders ad pecuniam solvendam* and *orders factum praestandum* in respect of their nature and means of enforcement. **[8 Marks]**

**End of Examination**