



MIDLANDS STATE UNIVERSITY

FACULTY OF LAW

PROCEDURAL LAW DEPARTMENT

CIVIL PROCEDURE

CODE: LB205

OCTOBER 2020

DURATION: 3 HOURS

INSTRUCTIONS

1. Answer ***all*** questions.
 2. Students may bring ***unannotated*** copies of :
 - i) The Magistrates Court Act [Chapter 7:10]
 - ii) The Magistrates Court (Civil) Rules, S.1 11 of 2019.
 3. This paper is worth **70 Marks**.
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Question 1

The Plaintiff issued a summons commencing action at the Gweru Magistrate Court. In the summons, the Plaintiff claims damages on the ground of the Defendant having committed adultery with the wife of Plaintiff at the time, and alienation of her affection which ultimately led to the breakdown of marriage and a decree of divorce granted against him. The Messenger of Court served the summons commencing action on the Defendant on the 18th of March 2019 at 05:45am using an electronic mail.

You are a legal practitioner for the Defendant who wants to raise a constitutional issue and argue that a damages claim arising from adultery no longer has any existence in Zimbabwean law, as it is outdated.

Advise:-

- a) Whether there was proper service of the summons on the Defendant. **[3 Marks]**
- b) On how the Defendant would raise the constitutional question in the Magistrates Court, and **[5 Marks]**
- c) Explain how the matter would proceed until it is determined by the Magistrates assuming that the Plaintiff is contesting. **[7 Marks]**

Question 2

Describe the order in which proceedings in a straight forward contested court application may take up to obtaining relief from the Magistrate Court. **[10 Marks]**

Question 3

Order 18 of the Magistrate Court (Civil) Rules makes provision for discovery and discovery of documents.

- a) What is the object of discovery and under what circumstances would it be appropriate to request a party to discover; **[2 Marks]**
- b) What are the grounds upon which discovery may be resisted? **[2 Marks]**

c) What is the effect of failing to discover?

[1 Mark]

Question 4

Explain the procedure followed in conducting a trial in the Magistrates Court, dealing specifically with the following issues:-

- a) the duty to begin; **[2 Marks]**
- b) default by one of the parties upon resumption of the trial after adjournment; **[2 Marks]**
- c) absolution from the instance; **[2 Marks]**
- d) recalling of witnesses; and **[2 Marks]**
- e) closing address. **[2 Marks]**

Question 5

Sarah sues Tinashe for defamation damages in the sum of \$25 000.00. Sarah succeeds in her action. Despite reminders, Tinashe fails to pay as he is unemployed. Sarah wants to know if there are any legal steps that she can take against Tinashe to enforce the judgment.

- a) Advise Sarah on how she can best enforce the judgment. **[2 Marks]**
- b) Outline the major steps involved in the enforcement of the judgment as per your recommendations in (a) above. **[10 Marks]**
- c) Briefly distinguish between orders *ad pecuniam solvendam* and orders *ad factum praestandum* in respect of their nature and means of enforcement. **[8 Marks]**

Question 6

Outline the procedure of noting an appeal against the judgment/order of a Magistrate.

[10 Marks]

End of Examination