



MIDLANDS STATE UNIVERSITY

FACULTY OF LAW

PROCEDURAL LAW DEPARTMENT

CIVIL PROCEDURE

CODE: LB205

NOVEMBER 2017

DURATION: 3 HOURS

INSTRUCTIONS

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

The Defendant was served with summons issued out of the Gweru Magistrates Court, in which the Plaintiff is contesting his late mother's written Will bequeathing her house in Senga to Defendant.

As a Legal Practitioner engaged by Defendant you have entered an appearance to defend and the Plaintiff's Legal Practitioner then serves an application for Summary Judgement on you.

Advise:-

- i) Whether the Gweru Magistrates Court has jurisdiction to preside over the matter. **[5 Marks]**
- ii) In order for the Summary Judgement application to have been properly brought, the Magistrates Court rules require that the claim falls within a limited category of claims.

What are the claims which fall under this limited category?

[5 Marks]

Question 2

What are the five (5) features of the Small Claims Court which distinguishes its operations from the Magistrates Court?

[5 Marks]

Question 3

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

- i) duty to begin;
- ii) evidence in chief;
- iii) cross examination;
- iv) exclusion of witnesses from the Court room; and
- v) absolution from the instance.

[10 Marks]

Question 4

Dean is the owner of a farm situated 40km out of Gweru. He has been leasing his farm to Peter for the past 2 years. The Messenger of Court executes against property, following a default judgement granted against Dean in favour of a local Financial Institution, for money lent and advanced.

The Messenger of Court proceeds to attach and remove Peter's 10 herd of cattle along with other goods belonging to Dean which he had left on the farm upon its lease.

As a legal practitioner, explain:-

- i) the documents that would have been filed with the Clerk of Court to obtain default judgment;
[3 Marks]
- ii) the procedure followed by Peter in an attempt to have his property released from attachment;
[5 Marks]
- iii) the major steps involved in the enforcement of a judgment by way of a warrant of execution against property; and
[10 Marks]
- iv) assume that Dean wishes to have the default judgment set aside after finding out that the summons was served by affixing it to the front principal door of the farmhouse, set out what Dean needs to prove as well as the procedure to be followed in order to have the default judgment set aside.
[10 Marks]

Question 5

According to Section 40 of the Magistrates Court Act [Chapter 7:10], an appeal to the High Court is against any rule/order of the Magistrates Court having the effect of a "final and definitive" judgment.

- i) Discuss citing relevant authority, the test for appealability of a matter decided by the Magistrates Court.
[5 Marks]
- ii) What is the effect of noting an appeal against the decision of the Magistrates Court?
[2 Marks]
- iii) Explain the procedure of noting an appeal against a decision of a Magistrates Court.
[10 Marks]

End of Examination