



MIDLANDS STATE UNIVERSITY

FACULTY OF LAW

PROCEDURAL LAW DEPARTMENT

CIVIL PROCEDURE

CODE: LB205

AUGUST 2022

DURATION: 3 HOURS

INSTRUCTIONS

1. *Answer all questions.*
 2. *Students may bring unannotated copies of:*
 - i) *The Magistrate Court Act [Chapter 7:10].*
 - ii) *The Magistrate Court (Civil) Rules, 2018 Statutory Instrument 11 of 2019.*
 - iii) *This paper is worth 70 Marks.*
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Question 1

On the 07th of May 2022, the Plaintiff (Gazimbi Motors (Pvt) Ltd) issued summons against the Defendant (Rudo) for goods sold and services rendered, at the Gweru Magistrate Court. Plaintiff alleges that the whole cause of action arose within the jurisdictional area of the Magistrates Court. The Defendant raised a special plea in the material terms which read as follows:-

"Defendant raises the following special plea to Plaintiff's summons as amplified by the further particulars thereto. Defendant avers that this Honourable Court does not have jurisdiction in this action over the person of the Defendant who resides in Mutare inasmuch as Plaintiff's cause of action did not arise wholly within the jurisdictional area of this Court as is alleged by Plaintiff, by reason of the fact that Plaintiff agreed to accept payment from Defendant for the goods and services allegedly supplied by Plaintiff to Defendant in the form of a motor vehicle that was stationed in Harare. Plaintiff accordingly agreed that it was a material term of the contract between the parties that payment for the goods and services on which Plaintiff's claim is based would have been made in Harare once Plaintiff obtains delivery of the motor vehicle, outside the jurisdiction of the above Honourable Court."

After hearing of the special plea, the Magistrate dismissed the special plea and the Defendant took the matter on appeal.

As a legal practitioner, advise on:

- a) the meaning of the term "whole cause of action"; **[3 Marks]**
- b) whether or not the Defendant has any prospects of success on appeal; **[10 Marks]**
- c) If the appeal is dismissed, outline how the contested action would then proceed until a judgment is granted by the Magistrate. **[10 Marks]**

Question 2

Explain the procedural steps that are involved in an *ex parte* application beginning from the initiation of the proceedings up to the granting of a final order. **[10 Marks]**

Question 3

A Defendant wishes to have a default judgment set aside after finding out that the summons was served by affixing to the principal door of the house.

Explain what needs to be proved as well as the procedure to be followed in order to have the default judgment set aside.

[10 Marks]

Question 4

Explain the major steps involved in the enforcement of a judgment by way of a warrant of execution against movable property.

[10 Marks]

Question 5

a) Explain the distinction between a special plea and an exception.

[3 Marks]

b) What is an *order ad factum praestandum*?

[4 Marks]

Question 6

Discuss the procedures of noting an appeal against the decision of a Magistrate.

[10 Marks]

End of Examination