



**MIDLANDS STATE UNIVERSITY**

**FACULTY OF LAW**

**PROCEDURAL LAW DEPARTMENT**

**CIVIL PROCEDURE**

**CODE: LB205**

**MAY/JUNE 2019**

**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]*
    - ii) *The Magistrates Court (Civil) Rules, S.1 11 of 2019.*
  3. *This paper is worth 70 Marks.*
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### **Question 1**

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

### **Question 2**

The Plaintiff has issued a summons commencing action at the Gweru Magistrates Court. In the summons the Plaintiff claims damages on the ground of the Defendant having committed adultery with the wife of Plaintiff during the subsistence of the marriage 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 has served the summons commencing action on the Defendant on the 18<sup>th</sup> of March 2019 at 05:45 am using 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and argue that a damages claim arising from adultery is no longer consistent with the Constitution of Zimbabwe and is outdated.

Advise:

- i) whether there was proper service of the summons on the Defendant; **[3 Marks]**
- ii) on how the Defendant would raise the constitutional question in the Magistrates Court; and **[5 Marks]**
- iii) how the matter would proceed until it is determined by the Magistrate assuming that the Plaintiff is contesting the constitutional challenge. **[7 Marks]**

### **Question 3**

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

- i) What is the object of discovery and under what circumstances would it be appropriate to

request a party to discover?

**[2 Marks]**

ii) What are the grounds upon which a party may object to discover certain documents?

**[2 Marks]**

iii) What is the effect of failing to discover?

**[1 Mark]**

#### **Question 4**

i) What is the significance of closure of pleadings in terms of the Rules?

**[4 Marks]**

ii) Outline the procedure for barring a party in terms of the Rules.

**[5 Marks]**

iii) What is the effect of a bar?

**[1 Mark]**

iv) What factors does a court take into account before a bar is removed?

**[4 Marks]**

#### **Question 5**

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

i) the duty to begin;

**[2 Marks]**

ii) default by one of the parties upon resumption of the trial after an adjournment;

**[2 Marks]**

iii) absolution from the instance;

**[2 Marks]**

iv) recalling of witnesses; and

**[2 Marks]**

v) closing address.

**[2 Marks]**

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### Question 6

Sarah sues Tinashe for defamation damages in the sum of \$25 000.00. Sarah succeeds in her action.

Despite reminders, Tinashe refuses and/or fails to pay as he is unemployed. Sarah wants to know if there are any legal steps that can be taken against Tinashe to enforce the judgment.

- i) Advise Sarah on how she can best enforce the judgment. **[2 Marks]**
- ii) Outline the major steps involved in the enforcement of the judgment as per your recommendations in (i) above. **[8 Marks]**
- iii) Briefly distinguish between orders *ad pecurian solvendam* and orders *ad factum praestandum* in respect of their nature and means of enforcement. **[6 Marks]**

**End of Examination**