



MIDLANDS STATE UNIVERSITY

FACULTY OF LAW

PROCEDURAL LAW DEPARTMENT

CIVIL PROCEDURE

CODE: LB205

NOVEMBER 2019

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

An action was brought against the Defendant, Mr Maruta, arising from a customary law marriage that occurred in November 2014 in Zvimba. It was alleged in the summons that the marriage was taboo because it took place in November, a sacred month under customary law in Zimbabwe. On the 10th December 2014, the local chief personally served summons on the Defendant in Chinhoyi requiring him to attend the Chief's Court.

As a candidate attorney who is approached by Defendant, advise on:

- a) the three grounds upon which a Local Court can exercise jurisdiction over the Defendant; **[3 Marks]**
- b) whether the service of the summons by the Chief was proper; **[2 Marks]**
- c) the procedure that obtains at the hearing and the enforcement of the judgment if obtained by the Plaintiff; and **[10 Marks]**
- d) the procedure that the Defendant can adopt if dissatisfied with the outcome of the judgment issued by the Chief. **[5 Marks]**

Question 2

The Plaintiff instituted summons against the Defendant for:

- i) payment of \$50 000.00 being the value of diesel stolen and misappropriated by the Defendant during his employment with the Defendant;
- ii) interest on the above sum at the rate of 5% from date of summons to date of payment; and
- iii) costs of suit.

When the Messenger of Court went to the Defendant's place of residence she found the house locked and placed the summons in a letter box."

As a legal practitioner for the Plaintiff, explain:

- a) whether there was proper service of the summons in the circumstances; **[3 Marks]**
- b) how the Plaintiff would proceed to apply for judgment if the Defendant does not enter an appearance to defend; and **[5 Marks]**
- c) how the action would proceed until the Court grants judgment if the action is contested. **[10 Marks]**

Question 3

Chamu issues summons against Tekere in the sum of \$20 000.00 being money lent and advanced. Tekere undertakes to settle the matter. Meanwhile, Chamu hears from some business colleagues that Tekere has liquidated his assets and is planning to relocate to Mozambique because his mother is a Mozambican by birth.

Chamu needs to act quickly and has engaged you to represent him:

- a) What advice would you give Chamu? **[3 Marks]**
- b) Outline the procedure that you would use from commencement of proceedings until he obtains relief from the Court. **[6 Marks]**

Question 4

What advice would you give to a Defendant who wishes to institute a counter claim against a Plaintiff if the counter claim exceeds the Magistrates Court's jurisdiction? **[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.

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- i) Citing relevant authority, discuss the test for appealability of a matter decided by the Magistrates Court. **[6 Marks]**
 - ii) What are the contents of a valid notice of appeal? **[4 Marks]**
 - iii) What is the effect of noting an appeal against the decision of the Magistrates Court? **[3 Marks]**

End of Examination