



MIDLANDS STATE UNIVERSITY

## FACULTY OF LAW

### PROCEDURAL LAW DEPARTMENT

CIVIL PROCEDURE

CODE: LB205

SPECIAL/SUPPLEMENTARY EXAMINATION

NOVEMBER 2021

DURATION: 3 HOURS

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### *INSTRUCTIONS*

1. Answer **all** questions.
  2. Students are allowed to bring in the examination room **un-annotated** copies of:
    - i) *The Magistrate Court Act [Chapter 7:10]*
    - ii) *The Magistrate Court (Civil) Rules, SI 2000 of 2019*
  3. This paper is worth **70** Marks
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### Question 1

Your client was served with a summons by the Messenger of Court and you duly entered an appearance to defend on her behalf. Three months after entry of the appearance to defend and filing a Request for Further Particulars, you received a Notice of Withdrawal of the Plaintiff's claim from the Plaintiff's Legal Practitioners. The material part of the Notice of Withdrawal reads "the Plaintiff hereby withdraws the above action".

As a legal practitioner for the Defendant, explain:-

- a) How the contested action would have proceeded from issuance of summons up to the delivery of a judgment by the small court, had it not been withdrawn. **[15 Marks]**
- b) Whether the Notice of Withdrawal was proper, there being no prior discussion of the action between yourself and the Plaintiff's Legal Practitioners. **[4 Marks]**
- c) How will you respond to such a Notice of Withdrawal? **[5 Marks]**

### Question 2

Aro borrowed money from TTT Bank in order to build a dwelling house on a vacant plot of land owned by her. The loan was secured by mortgage bond over the plot. In a standard form mortgage bond contract. The Plot was named as the *domicilium citandi et executandi*. Before any building had been constructed on the vacant Plot, Aro defaulted on her loan payments. The Messenger of Court went to serve summons. Finding that the Plot was vacant, undeveloped and unoccupied, the Messenger of Court proceeded to serve the summons by affixing it to a prominent tree at the Plot.

After the expiry of the *dies induciae*, TTT Bank applied for a default judgment which was not granted because the Magistrate queried the propriety of the service of the summons. As a Legal Practitioner engaged by TTT Bank for advice, explain:

- a) The procedure that TTT Bank would have used to apply for default judgment.

**[5 Marks]**

b) Fully explain, why the Magistrate queried the propriety of the service of the summons.

**[4 Marks]**

c) The terms *domicilium citandi et executandi*, *residence* and *domicilium*.

**[3 Marks]**

### **Question 3**

On her divorce from her husband Paul, Kate was awarded custody of their 2 minor children. As agreed, Paul takes the minor children on holiday but at the end of the holiday he refuses to return the minor children to Kate. Kate is concerned about the children's welfare and school attendance, and approaches the Court for an order to have the children removed from Paul's care and be returned to him.

As a legal practitioner consulted by Kate, advise her on what legal procedure can be used in the circumstances, and indicating all the procedural steps involved until the ultimate relief is obtained.

**[14 Marks]**

### **Question 4**

Explain the major steps involved in the enforcement of a judgment by way of Warrant of Execution against property and for Civil Imprisonment.

**[20 Marks]**

**End of Examination**

