



**MIDLANDS STATE UNIVERSITY**

**FACULTY OF LAW**

**PROCEDURAL LAW DEPARTMENT**

**CIVIL PROCEDURE**

**CODE: LB205**

**DECEMBER 2018**

**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.1 290/80.
  3. This paper is worth ***70 Marks***.
-

### Question 1

An action was brought against the Defendant, Mr Gudo, arising from a customary law marriage that occurred in November 2017 in Mberengwa. It was alleged in the summons that the marriage was a taboo because it took place in November a "sacred" month under customary law in Zimbabwe. On the 9<sup>th</sup> of December 2017, the local chief of Mberengwa area, personally served summons on the Defendant in Zvishavane requiring him to attend the chief's court at the local business centre in Mberengwa.

Advise him on:

a) the three (3) 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

**[5 Marks]**

d) which court you would approach if dissatisfied with the method of service and any other procedural irregularities.

**[2 Marks]**

### Question 2

Kuda wants to divorce his wife with whom he has a registered marriage in terms of the Customary Marriages Act [Chapter 5:07]. He has already chased her away from the matrimonial home in Mtapa and is now residing with her parents in Senga.

Further, he wishes to contest his late mother's Will bequeathing her (the mother's home) to his wife.

By the time Kuda consults you he had already issued out processes for both claims at the Kwekwe Magistrates Court.

Advise him on:

- a) the propriety of his action *vis-à-vis* the jurisdiction of the Magistrates Court. **[10 Marks]**
- b) the procedure of a contested action from service of a summons until the matter is set down for a hearing. **[10 Marks]**

### Question 3

On the 1<sup>st</sup> of October 2018, Max was served with a summons on 14 days notice, claiming payment of money due on a 'refer to drawer' cheque which he had issued in favour of the plaintiff. He entered an appearance to defend on the 19<sup>th</sup> of October 2018 and filed his plea simultaneously.

- a) What is your comment on Max's conduct? **[5 Marks]**
- b) What are the procedural options available to the Plaintiff as a consequence? **[5 Marks]**
- c) Explain the procedural steps that are involved in the procedural option that you have chosen in (b) above, until the matter is decided by the Court. **[5 Marks]**
- d) What advice would you give to Max if he consults you on the best and quickest way to resolve the matter? **[5 Marks]**

### Question 4

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 5

Outline the procedure of noting an appeal against a decision of a Magistrate Court. **[8 Marks]**

**End of Examination**