

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

CIVIL PROCEDURE-LLB208

JUNE 2018

DURATION: THREE HOURS

INSTRUCTIONS TO CANDIDATES

1. Answer **two questions in Section A** and **two Questions from Section B**.
2. This paper is worth 100 marks.
3. Marks allocated to questions are indicated in brackets.
4. Start each question on a new page.
5. **Material allowed in the exam**
 - i. Magistrate Court Rules, 1980;
 - ii. Magistrate Court Act [Chapter 7:10];
 - iii. Customary Law and Local Courts Act [Chapter 7:05];
 - iv. Customary Law and Local Courts (Amendment), Rules 2009.

NB: DO NOT TURN OVER THE QUESTION PAPER OR COMMENCE WRITING UNTIL INSTRUCTED TO DO SO.

SECTION A

Answer two questions

QUESTION 1

You are a legal practitioner practising in Harare. You are consulted by the Chief Executive officer of Indigenous Zimbabwe (Pvt) Ltd, a company registered in Zimbabwe with its Head Office at No.87, 6th Street, Harare. He informs you that his company entered into a contract for the installation of a telephone system and networking of computers at its Head Offices, with Communication Tech (Pvt) Ltd, a company registered in South Africa with its Head Office in Pretoria. Communication Tech Pvt Ltd, started work a month ago but abandoned the project last week after having demanded extra payment due to escalating costs. Indigenous Zimbabwe (Pvt) Ltd rejected the demand. The partially installed equipment costs about \$8 000.00. All technicians of Communication Tech (Pvt) Ltd who were working on the project have left Zimbabwe. However, there is a caretaker who has remained behind, on site. The Chief Executive Officer wants to know among other things: -

- a) Which Court has the jurisdiction to hear the matter if his company decides to institute proceedings. [5 marks]
- b) Explain the concept of attachment of property or arrest of a defendant to found jurisdiction? [10 marks]
- c) You are employed by Sandton Legal Practitioners as a junior lawyer. Mr Moyo came to you with his file in a case in which he is being sued by his former landlord for arrear rentals. When you opened the file you realised that the last papers filed by Mr Moyo with the Magistrate Court is his replication.

With reference to Magistrate Court (Civil) Rules, 1980, what is the next stage you will do in order to prosecute the case. Explain fully the purpose of that stage.

[10 marks]

QUESTION 2

- a) A summons commencing action for ejectment of Defendant and all those that claim title through him were issued at the Harare Magistrate Court and served on the Defendant by affixing at the outer principal door. The Defendant took the summons to

her legal practitioner who did not enter an appearance to defend but instead filed a request for further particulars. The Plaintiff obtained default judgment against him.

As a candidate attorney, engaged by Defendant, advise: -

- i. Whether it was proper for the Magistrate Court to grant a default judgment under the circumstances; [5 marks]
- ii. On the procedure of obtaining a default judgment; [10 marks]
- iii. What an applicant for rescission of judgment must establish to succeed in the application. [10 marks]

Question 3

In 2008, Milner entered into a registered customary law marriage with the daughter of Mr Jones, Anesu. Milner failed to pay part of the agreed lobola or marriage consideration to Mr Jones, namely, seven head of cattle. At the time when this agreement was made, the sort of cattle which the parties had in mind were worth \$350 per head. Until 2018, the cattle had not been handed over to Mr Jones. He therefore instituted an action in the Magistrates Court claiming the delivery of the seven head of cattle. By this time, the value per head had increased considerably. Mr Jones did not claim the value of the cattle in the alternative. The respondent admitted liability to deliver the cattle.

- i. Citing relevant statutory provisions and case law authorities, discuss the jurisdiction of the Magistrates Court in this matter. [10 marks]
 - ii. With the aid of examples, explain the difference between a plea in bar and a dilatory plea. [5 marks]
- b) On 5 September 2017, Hardlife entered into loan agreement with Ken (Pvt) Limited, wherein Ken (Pvt) Ltd advanced and loaned Hardlife the sum of US\$5 000.00. In terms of the loan agreement, the loan was to be paid not later than 31 January 2018. In breach of the terms of the loan agreement Hardlife failed to pay the loaned amount. Ken (Pvt) Ltd issued summons against Hardlife claiming the payment of US\$5 000.00. The judgment was granted against Hardlife and an order to recover US\$5 000.00 loaned to Hardlife was granted by the Magistrate Court in favour of Ken (Pvt) Ltd. Ken (Pvt) Ltd issued a writ of execution for attachment of Hardlife's property to liquidate the amount loaned to him.
- When the Messenger of Court went to Hardlife's place of residence to attach his property, they found out that there was nothing of value that could be found to satisfy

the judgment. The Messenger of Court provided his nulla bona return. Hardlife is employed by J & J Logistics (Pvt) Ltd and he earns his salary in the sum of US\$500.00. Ken (Pvt) Ltd approaches you seeking legal advice.

Giving reasons, advise on means of execution which available to the company for it to recover its money.

[10 marks]

SECTION B-ANSWER TWO QUESTIONS FROM THIS SECTION

QUESTION 3

Discuss fully all the considerations which a litigant would take into account in deciding whether to initiate proceedings by way of action or application procedures. [25 marks]

QUESTION 4

(i) Describe the sequence in which proceedings in a straight forward contested civil action may take in the Magistrate Court up to trial stage. [15 marks]

(ii) Outline the procedure of noting an appeal against the decision of the Magistrates Court. [10 marks]

QUESTION 5

(i) Outline the procedural steps involved when a party decides to initiate proceedings by way of application up to obtaining relief from the Court. [15 marks]

(ii) Under what circumstances would be an applicant be permitted to bring an *ex-parte* application? [10 marks]

[END OF EXAMINATION-100 MARKS]