

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

CIVIL PROCEDURE – LLB208

JANUARY 2019

DURATION: THREE HOURS

INSTRUCTIONS TO CANDIDATES

1. Answer any **two** questions from **Section A** and any **two** questions from **Section B**.
2. **Material allowed in exam**
 - i) Magistrates Court Rules, 1980;
 - ii) Magistrates Court Act [Chapter 7:10];
 - iii) Customary Law and Local Courts Act [Chapter 7:05];
 - iv) Customary Law and Local Courts (Amendment), Rules 2009.

INFORMATION FOR CANDIDATES

- (a) Each question carries **25** marks.
- (b) Credit shall be given for referring to case law, statutes or any other authorities wherever applicable.
- (c) Cell phones are not allowed into the examination room.
- (d) Begin each answer to a full question on a fresh page.

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

SECTION A

QUESTION 1

Maziya was employed by the District Development Corporation as a driver. On 26 August 2016, he was involved in a road accident in which Mr. Moyo's wife was killed. After one year from the date of the accident, Maziya was convicted of culpable homicide. Mr. Moyo then issued summons two years and two months after the accident. In Mr. Moyo's summons, the Minister of Transport was cited in his personal capacity. Mr. Moyo's view was that the cause of action arose on 26 August 2017, the date when Maziya was convicted of culpable homicide. When the summons were issued, there was no prior communication between the Plaintiff and the Defendants. Mr. Moyo further contended that he only became aware of Maziya's identity on the date of his conviction on the 26th of August 2017. Furthermore, Mr. Moyo argued that he was not aware that the District Development Corporation was Maziya's employer and could be sued for vicarious liability until he was so advised by his employers.

Required

- (a) With reference to relevant authorities, advise Mr. Moyo on the validity of his claim. (15 marks)
- (b) Discuss the procedure which may be available to the Defendants in responding to the above claim. (10 marks)

[TOTAL: 25 marks]

QUESTION 2

Zivanai purchased an immovable property from Tapera, being Stand Number 26, Chiedza Drive, Bindura. At the time of such purchase, the property was occupied by Tichaona. Zivanai alleged that prior to the purchase, he had viewed the property on many occasions and he had been guided by Tichaona during such viewing. Tapera was reluctant to transfer the property to Zivanai and he was successfully sued by Zivanai and the property was transferred to Zivanai. Zivanai then demanded rentals from Tichaona who refused to pay rentals on the basis that he was the owner of the property and not a lessee. Zivanai proceeded to issue summons for the eviction of Tichaona. At the pre-trial conference stage, the sole issue which was referred to trial was whether or not Tichaona had a defence to the claim of eviction. In a separate case, Tichaona issued summons seeking the cancellation of the title deeds which had been registered in the name of Zivanai in respect of Stand Number 26, Chiedza Drive, Bindura. In his summons, Tichaona cited Zivanai, Tapera and the Register of Deeds as Defendants. Out of the three Defendants, only Zivanai entered an appearance to defend. Tichaona proceeded to apply for a default judgement against Tapera and the Registrar of Deeds who had not responded to the summons but the Court's order included a substantive order against Zivanai who had entered an appearance to defend and a plea.

Required

Advise Zivanai on his remedies and the procedure which he must follow in order to get the relief he seeks. [25 marks]

QUESTION 3

Makomba Goldfields Ltd sued its former employees for eviction from the houses they occupied. Summons were issued at Bindura Magistrates' Court. The former employees entered an appearance to defend. The Plaintiff's case was that the Defendants were occupying the houses in terms of leases and they were mere tenants. The Defendants' argument was that they had bought the houses in terms of a clause in the lease agreement which allowed them to purchase the houses whilst leasing them. No agreements of sale had been signed between the Plaintiff and each of the seventeen Defendants. The houses were still registered in the Plaintiff's name. The Plaintiff made an application for summary judgment against the Defendants.

Required

Discuss what the Defendant's opposing affidavits in the above application should contain and their prospects of success in their opposition. [25 marks]

SECTION B

QUESTION 4

- (a) Discuss the jurisdiction of the Community Courts in Zimbabwe. (15 marks)
- (b) Outline the procedure for enforcement of the Community Court orders. (10 marks)

[TOTAL: 25 MARKS]

QUESTION 5

'A litigant with a direct or substantial interest in a matter is the one who has the capacity to institute proceedings in a Court of Law'. Discuss. [25 marks]

QUESTION 6

Outline and explain the procedure from the set down of a matter for trial to the delivery of judgment. [25 marks]

[END OF EXAMINATION – 100 MARKS]