

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

CIVIL PROCEDURE - LLB 208

JUNE 2019

DURATION: 3 HOURS

INSTRUCTIONS TO CANDIDATES

1. Answer **ALL** questions.

2. **Materials allowed in exam**
 - a) Magistrates Court Rules, 2019;
 - b) Magistrates Court Act [Chapter 7:10];
 - c) Customary Law and Local Courts Act [Chapter 7:05];
 - d) Customary Law and Local Courts (Amendment), Rules 2009.

INFORMATION FOR CANDIDATES

1. Credit shall be given for referring to case law, statutes or any other authorities wherever applicable.
2. Notes, handouts and textbooks are not allowed into the examination.
3. Cellphones are not allowed into the examination room.
4. 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.

QUESTION 1

- a) Explain the circumstances in which summons commencing action can be validly withdrawn either with notice or without notice to the other party. (6)
- b) What is the significance of a demand in action procedure? (9)
- c) Outline the rights and obligations of the Messenger of Court in interpleader proceedings. (10)

[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 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 Registrar of Deeds as defendants. Out of the three defendants, only Zivanai entered an appearance to defend. Tichaona proceeded to apply for a default judgment 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

Discuss the procedure for the enforcement of Community Court orders in Zimbabwe. [15 marks]

QUESTION 4

Job made an application for summary judgment against Mary. Mary decided to consent to the application twenty days after she had been served with a copy of the application. She consented to an order directing her to pay \$20 000.00 together with a costs of suit. One immovable property belonging to Mary was identified as executable. A writ of execution was issued in the sum of \$20 000.00. The messenger of court proceeded to attach Mary's immovable property. After the attachment, Mary made a payment of \$15 000.00 and agreed with the messenger of court that she would clear the balance within two months. The messenger of court advertised the immovable property upon expiry of one month from the date of attachment. The immovable property was supposed to be sold within three days when Mary became aware of the impending sale.

Required

- a) Identify the nature of the application which Mary must make and the reasons for choosing that application. (7)
- b) Discuss the procedure to be followed in the chosen application. (9)
- c) What are the prospects of success in Mary's application? (9)

[Total: 25 marks]

QUESTION 5

Discuss the circumstances in which the Constitutional Court can deal with matters which arise from the magistrates' court. **[10 marks]**

[END OF EXAMINATION – 100 MARKS]