



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE	:	LLB 208
COURSE TITLE	:	CIVIL PROCEDURE
DURATION	:	3 Hours
LEVEL	:	2:2
DATE	:	4 June 2019

INSTRUCTIONS TO CANDIDATES:

1. Answer **ALL** questions.
2. Credit shall be given for referring to case law, statutes or any other authorities wherever applicable.
3. Notes, handouts and textbooks are not allowed into the examination.
4. Cellphones are not allowed into the examination room.
5. Begin each answer to a full question on a fresh page.

1. **Materials allowed in exam**

- a) Constitution of Zimbabwe Number 20 of 2013
- b) High Court Rules, RGN No. 1047/71
- c) Supreme Court Rules, RGN No. 380/1964
- d) Constitutional Court Rules, SI 61 of 2016
- e) High Court of Zimbabwe Act [Chapter 7:06]
- f) Supreme Court of Zimbabwe Act [Chapter 7:13]
- g) Matrimonial Causes Act [Chapter 5:13]

QUESTION 1

- a) According to R75 (1) of the High Court Rules, 1971, a defendant may make a court application for the dismissal of the action on the grounds that it is frivolous and vexatious. With reference to decided case law authorities, explain the test which is used by courts to determine whether an action is frivolous or vexatious. (5)
- b) Discuss the scope of the High Court's jurisdiction in constitutional matters. (10)

[Total: 15 marks]

QUESTION 2

- a) What are the requirements for a successful application for rescission of judgment entered by consent? (5)
- b) Explain the main differences between an exception and a special plea. (5)

[Total: 10 marks]

QUESTION 3

Mr. Ncube issued summons against Prince on allegations of defamation. The summons was served on Prince through the messenger of court on 12 June 2018. Prince did not file and serve either the plea, request for further particulars and/or any answer to Mr. Ncube's claim within the *dies induciae*. Mr. Ncube proceeded to file and serve a Notice to plead and Intention to bar on Prince. In response to the Notice to plead and Intention to bar, Prince filed and served a request for further particulars.

Required

You have been approached by Mr. Ncube who seeks legal representation. With the aid of relevant authorities, explain the procedure you would adopt to safeguard his interests.

[25 marks]

QUESTION 4

- a) Evaluate the procedure in the Constitutional Court when there is a challenge to the election of a President or Vice President. (20)
- b) What should a litigant prove if he wants to introduce new evidence on appeal to the Supreme Court? (5)

[Total: 25 marks]

QUESTION 5

The plaintiff issued summons against the defendant claiming for an order directing the defendant to account for the sale of flu cured tobacco belonging to an insolvent. Before the trial, the plaintiff applied for leave to withdraw his declaration and further particulars. He wanted to file a new declaration. The plaintiff was claiming ownership of half of the tobacco crop that was sold. The defendant requested further particulars of the alleged ownership. The plaintiff supplied an unsigned agreement with an insolvent as part of further particulars. The defendant's defence was that this unsigned agreement was illegal if it related to cured tobacco. The plaintiff's amendment sought to allege that the tobacco was not cured but was still growing on the farm. The plaintiff also sought to withdraw the unsigned agreement.

Required

Discuss the options which are available to the parties in order to deal with the above situation and the Court's likely approach in those circumstances. [25 marks]

[END OF EXAMINATION – 100 MARKS]