

ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

LLB (Hons) Part II

Civil Procedure (Lower Courts) LLB208

Examination - 3 Hours

INSTRUCTIONS TO CANDIDATES

1. Answer all questions. Marks allocated for each question are shown in brackets.

2. You may take into the examination room the following:-

- 2.1 Customary Law and Local Courts Act Chapter 7:05
- 2.2 Magistrates Court Act Chapter 7:10
- 2.3 Magistrates Court (Civil) Rules SI 11/2019
- 2.4 Maintenance Act Chapter 5:09

NB The above must not be annotated in any way.

3. Use Blue or black ink only but not interchangeably.

Question 1

Your client recently bought a second hand car from Wapusa Garage for Z\$20 000-00. He paid cash for it. A few days later the owner of the Garage telephoned your client and informed him that the car was sold to him by mistake. He said it had earlier on been sold to another customer and was awaiting delivery. He asked your client to return the car and promised to refund him his Z\$20 000-00 with interest. Your client refused and insisted that he should abide by the contract. Last night the Garage owner sent some people who broke into your client's garage and took the car away. They left a written note which read:

"Wapusa Garage has repossessed the car. A sum of Z\$20 000-00 and Z\$2 000-00 (interest and payment for inconvenience) has been deposited into your bank account with Standard Chartered Bank, Main Street, Bindura. Sorry for the inconvenience."

Your client wants the car back because the price for which he bought it was a real bargain. A similar car would cost between Z\$30 000-00 and Z\$35 000-00. He wants to do something about the situation before Wapusa Garage disposes of the car.

What is the remedy available to your client and what procedural steps would he follow in initiating it? (15)

Question 2

- a) You caused summons to be issued against Minister of Mines in pursuance of your client's claim for damages. Name the Official(s) on whom the summons must be served. (4)
- b) A Plaintiff issued summons against a Defendant who is self employed. The Plaintiff used the Defendant's business address in Glendale as that was the only address he knew. The Messenger of Court attempted to serve the summons and was told that the Defendant no longer operated from the premises cited in the summons. The new occupant does not know the Defendant's new address but is aware that he is still in Glendale.
 - i) What should the Plaintiff do in order to ensure that service is effected? (5)
 - ii) What method of service would you suggest to the Plaintiff and why? (2)
 - iii) When would a Defendant move to strike out material from a summons rather than except to the summons? (2)
 - iv) What are the consequences upon the proceedings and upon the Plaintiff of acceptance of a payment into court. (2)

Question 3

- a) Briefly outline the procedure to be followed where a Defendant wishes to make a claim in reconvention which exceeds the jurisdiction of the Magistrates Court. Assume that the Defendant does not wish to abandon any part of his claim. (6)
- b) You act for a Plaintiff in the Magistrates Court and have duly served the Defendant for a pre – trial conference. Defendant and/or his Counsel fails to pitch up, what relief would you seek and would the relief you seek be automatically granted? (4)
- c) What does the Magistrates Court Act provide as to the jurisdiction of the court in respect of:-
 - i) Persons (5)

Question 4

- a) Under what circumstances may an Application for Summary Judgment be made in the Magistrates Court. (5)
- b) Paxton issues Summons against Computer. Paxton is claiming payment of the sum of Z\$10 000-00 in respect of services requested and rendered by Paxton to Computer on 15th August, 2019. Using simulated facts where convenient. Draft pleas of:-
 - i) Res judicata (5)
 - iii) lis pendens (5)

THE END