



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 224  
COURSE TITLE : CIVIL PROCEDURE - (1) 2022  
DURATION : 3 Hours  
LEVEL : 2.2  
DATE : 19 JAN 2023

**INSTRUCTIONS TO CANDIDATES:**

1. This exam is out of 100.
2. Answer **all** questions.
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.
6. **Material allowed in exam**
  - i. Magistrates Court Rules, 2018;
  - ii. Magistrates Court Acts [Chapter 7:10];
  - iii. Customary Law and Local Courts Act [Chapter 7:05];
  - iv. Customary Law and Local Courts (Amendment), Rules 2009.

### QUESTION 1

Simbarashe sued Mupfure (Pvt) Ltd on allegations that it had illegally obtained certain advantages in violation of the law. As the plaintiff, he sought an order for the payment of damages as a result of the defendant's unlawful actions. The defendant entered an appearance to defend. It then raised two special pleas based on *res judicata* and jurisdiction. Simbarashe was served with the special pleas.

#### Required

Advise Simbarashe on the procedure he should follow and the possible outcomes in that procedure.

[15 marks]

### QUESTION 2

Discuss the various ways by which proceedings in the community court may raise constitutional issues.

[25 marks]

### QUESTION 3

With reference to relevant authorities, discuss the circumstances which justify an application for execution pending appeal and the factors which are considered by the court.

[25 marks]

### QUESTION 4

Jabulani had an order for maintenance of his minor child granted against him in 2019. The application was made by his former wife, Tambudzai. When the order was granted, he was employed by a private school as a teacher. He has since been dismissed from employment. He is now into selling vegetables for a living. He has fallen behind in paying maintenance.

#### Required

Advise both parties on the remedies that are available to them under their situations and the procedure each one can follow.

[15 marks]

### QUESTION 5

Explain the following terms;

- a) Judgment debtor (2)
- b) *Nulla bona* return (2)
- c) Tender of performance (2)
- d) *Lis pendens* (2)
- e) Interpleader (2)

[Total: 10 marks]

**QUESTION 6**

With reference to relevant authorities, discuss the approach of courts in an application for rescission of default judgment. [10 marks]

**END OF PAPER [100 marks]**

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