



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

EXAMINATION PAPER

COURSE CODE : LLB 308
COURSE TITLE : Civil Procedure (Superior Courts)(2)
DURATION : 3 Hours
LEVEL : 3.2
DATE : ~~29~~ DEC 2022 30 DEC 2022

INSTRUCTIONS TO CANDIDATES:

1. This question paper comprises of two printed pages.
2. This question paper comprise of four questions.
3. Answer all questions.
4. Start each question on a new page of your answer sheet

Question 1

- a) What is an Amicus curiae? (4 marks)
- b) What are the salient averments to be included in an application for the appointment of an Amicus curiae in the Constitutional Court? (4 marks)

Question 2

- a) What are Interrogatories? (4 marks)
- b) Under what circumstances are Interrogatories applicable? (4 marks)

Question 3

Your client approaches you with instructions to apply to court for an order declaring her the sole guardian of her minor child. The child's father is based in New Zealand and has had nothing to do with your client and the minor child for several years. Your client intends to travel abroad with the child and has been advised to obtain the father's consent before a VISA for the child can be issued, unless she produces a court order declaring her or appointing her as sole guardian.

Describe the steps you will take in order to obtain relief for your client. (6 marks)

Question 4

Your client approaches you with a Writ of Execution against immovable property issued in the High Court served on him by CABS which has obtained an order for payment of money lent and advanced to your client in terms of a loan agreement. The order declares your client's property specially executable. Your client advises you that if execution is proceeded with, his family will be rendered homeless as the property in question is their only home occupied by him and his family. He further advises you that he is in a position to make a reasonable offer to settle the judgment debt. He asks you to help him save his family from being rendered homeless by approaching the High Court for relief.

- a) What is the application that you will make or relief you will seek on your client's behalf? (3 marks)
- b) What factors does the Judge hearing such an application consider in granting such application? (8 marks)

Question 5

Under what circumstances may one file an application for reinstatement of appeal in the Supreme Court? (3 marks)

Question 6

- a) State three (3) instances where one can apply for default judgment, in the Magistrates Court. (3 marks)
- b) State three (3) instances where one can apply for default judgment in the High Court. (3 marks)

c) Explain the difference in procedure involved in applying for default judgment in the Magistrates Court where on one hand the claim is a liquidated one and on the other hand the claim is for damages. **(5 marks)**

Question 7

You represent a Plaintiff who has won a judgment in the Magistrates Court. The Defendant has noted an appeal against the judgment. Can your client execute upon the judgment despite the noting of the appeal? Give reasons for your answer. **(4 marks)**

b) What is the nature of the application that you need to make to enable your client to execute upon the judgment notwithstanding the noting of the Appeal? **(2 marks)**

c) Which Court do you approach for such application? **(2 marks)**

d) What principles guide the court in determining the said application? **(6 marks)**

e) If the application is dismissed, what recourse if any, does your client have?**(3 marks)**

Question 8

Your client has, as a self-actor filed a Notice of Appeal in the Supreme Court against a judgment in the High Court. He has received an order from the Supreme Court that his Appeal has been struck off the roll for want of compliance with the rules of court

The time within which the appeal is to be filed has lapsed. He has now approached you to represent him as he believes justice was not done in the High Court.

What do you do to ensure that your client is heard by the Supreme Court?**(4 marks)**

Question 9

Your client has been appointed Executrix Dative to her late husband's estate. Prior to his death, her husband had instituted legal proceedings against Highrise Property Development seeking payment of damages for breach of contract. The matter had reached Pre- Trial Conference stage. Your client has approached you seeking advice on how to handle the matter and what she can do to ensure that her husband's estate recovers the damages claimed.

a) What advice would you give your client with regards to the claim and how she can proceed with same? **(4 marks)**

b) Would your answer be different if at the time of her husband's death the defendant had not yet filed a Plea? If so, why? **(3 marks)**

c) If the Defendant had not filed a Plea, how would you advise your client to proceed? **(4 marks)**

Question 10

a) Explain the difference between an Appeal and a Review. **(5 marks)**

b) What are the grounds on which proceedings/ decision may be brought on review **(8 marks)**

c) Distinguish between and Exception and a Special Plea (5 marks)

d) Distinguish between a mandatory and prohibitory interdict. (3 marks)

-END OF QUESTION PAPER-