



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

DEPARTMENT OF LAW AND LEGAL SERVICES

EXAMINATION PAPER

MODULE CODE : LLB 322

MODULE TITLE : CIVIL PROCEDURE (SUPERIOR COURTS) (1)

SPECIAL REQUIREMENTS:

DURATION : 3 HOURS

LEVEL : 3.2

DATE : 12 FEB 2024

INSTRUCTIONS TO CANDIDATES:

1. This question paper comprises of four 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 Chipo is married to Patience under general law. The couple was blessed with two minor children Bruce and Brian. They acquired various immovable and movable assets together during the course and subsistence of the marriage. One day Chipo came home earlier than the normal time and proceeded to the matrimonial bedroom, to his shock he found Patience and Billy the gardener in bed. The Chipo is of the strongest conviction the marriage has irretrievably broken down due to the adultery. Chipo wants a divorce.

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

Question 4

Thomas and Tavonga are in a partnership where they manufacture plastic bottles. Tavonga has been in various court battles since the inception of the partnership. The Sheriff of the High Court marches at the partnership offices one day and attaches all the movable assets. All the movable assets belong to Thomas in his personal capacity. The partnership offices belong to Tavonga. Thomas feels that it is unfair for his movable assets to be attached due to Tavonga's debts.

- a) What is the application that you will make or relief you will seek on your client's behalf? **(3 marks)**
- b) What steps would you take to obtain relief for Thomas? **(8 marks)**

Question 5

Under what circumstances may one file an application to leave further evidence in the Supreme Court? **(3 marks)**

Question 6

- a) State three (3) instances where one can apply for default judgment in the High Court. **(3 marks)**
- b) How can one can apply for rescission of default judgment in the High Court.

(3 marks)

c) State the circumstances which entails one to apply for a provisional sentence?

(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

Ruan files an appeal in the Supreme Court. On the date the appeal is to be heard by the Supreme Court the Supreme Court mero muto points out that the appeal is fatally defective as the grounds of appeal are not in accordance with the rules. The matter is struck off the roll with costs.

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 may be brought on through application procedure? **(6 marks)**

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

d) Distinguish between a joinder and misjoinder. (5 marks)

-END OF QUESTION PAPER-