



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW, BUSINESS INTELLIGENCE AND ECONOMICS

EXAMINATION PAPER

MODULE CODE : LLB 322
MODULE TITLE : Civil Procedure (Superior Courts)
DURATION : 3 Hours
DATE : 24 SEP 2024

INSTRUCTIONS TO CANDIDATES:

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

Question 1

Briefly define the following:

- a) Application for direct access
- b) Leave to appeal to the Supreme Court
- c) Constitutional avoidance
- d) Amicus curiae
- e) Dismissal for want of prosecution
- f) Absolution from the instance
- g) Application for joinder
- h) Declaration of rights
- i) Summary judgment
- j) Plaintiff's plea

[10 marks]

Question 2

Willard Birds and Armson Sims entered into an agreement of sale in respect of a motor vehicle wherein Willard sold his motor vehicle to Armson. The agreement was reduced into writing. In terms of the written agreement of sale payment was to be effect on the 30th of January 2024. Armson took possession of the motor vehicle. On the date the purchase price was due and payable Armson wrote a letter to Willard seeking time to pay as he had failed to acquire a loan he had applied for at his bank. Willard consents to the purchase price payment being deferred and it is agreed in writing that the payment would be due on the 20th of February 2024. On the 20th of February 2024 Willard approaches Armson for payment and Armson pleads for more time. On the 22nd of February Willard sends a written letter of demand to Armson demanding payment of the purchase price within seven days. Armson acknowledges the letter of demand through a letter in which he acknowledges indebtedness and prays for more time to pay. The seven-day period lapses and no payment is tendered. Frustrated Willard causes summons to be issued against Armson in respect of the amount owing. Upon receiving summons Armson duly enters an appearance to defend. After filing his appearance to defend Armson then files a request for further particulars. Willard files the requested particulars. Armson after receiving the said particulars makes a request for further and better particulars. Willard files the requested further and better particulars. After a month Willard files and serve Armson with a notice to plead and

intention to bar. Armson files his plea and denies ever owing Armson. Willard who has been self-acting approaches you and seeks to retain your services.

Draft the necessary application which will enable Willard to obtain a swift relief. [10 marks]

Question 3

The Constitution of Zimbabwe (2013) in terms of section 175 allows for the referral of matters to the Constitutional Court. Briefly explain the procedure and requirements in an application for referral to the Constitutional Court. [5 marks]

Question 4

Sifiso Sibanda and Nomqhele Vuyi were married in terms of the Marriages Act [Chapter 5:17] on the 11th of January 2022. On the 4th of November 2022 the marriage was blessed with a bouncing baby girl whom the named Mune. During the course of the marriage the parties acquired a residential house in Emerald Hill Harare which is the matrimonial home and another one in Avondale which they sublet, a farm In Beatrice, a Toyota Landcruiser vehicle and a Jeep Wrangler and household movables. The immovable properties are jointly owned. The Toyota Landcruiser belongs to Sifiso and the Jeep Wrangle to Nomqhele. The household movables are also jointly owned. The parties also registered a trust for the minor child in which they are the founders and trustees. The trust owns three houses in Sandton South Africa and two houses in Kigali Rwanda.

Sometime in the year 2024 the marriage waded through a quicksand of problems which culminated into Sifiso seeking a divorce. Sifiso approaches you as a reputable divorce attorney and you take instructions. Sifiso wishes the divorce to be pacific. Sifiso is prepared to move out of the matrimonial home and leave in the Avondale house. He wishes to retain his Toyota Landcruiser which he has been using all along. He wishes that the farm in Beatrice be transferred into the trust they had set up for the minor child. Sifiso wants Nomqhele to have all the household movables save for one 108-inch Samsung Television set, his PlayStation, his tool box and personal clothes. Sifiso wants Nomqhele to have sole custody of the minor child and that he will be granted access on weekends and school holidays. As for the maintenance of the minor child the trust through the revenue generated would be the vehicle for the

maintenance of the minor child. In pursuance of Sifiso's instructions you write a letter addressed to Nomqhele informing her of the decision. Nomqhele responds to your letter through her legal practitioners Finney & Figg a boutique law firm in the Avenues Harare. Nomqhele is not opposed to the divorce and is amenable to the division of assets, custody access and maintenance.

- a) Prepare summons for divorce for Sifiso Sibanda [10 marks]
- b) Prepare a notice of appearance to defend for Nomqhele [3 marks]
- c) Prepare the necessary affidavit for Nomqhele. [5 marks]
- d) Prepare the necessary affidavit for Sifiso. [10 marks]
- e) Prepare the document which embodies the terms of the divorce and ancillary relief both parties should sign [10 marks]
- f) Prepare the draft order [2 marks]

Question 5

Distinguish between an application for condonation and a reinstatement of appeal [5 marks]

****END OF PAPER****

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