



ZIMBABWE EZEKIEL GUTI UNIVERSITY
FACULTY OF LAW, BUSINESS INTELLIEGNCE AND ECONOMICS
EXAMINATION PAPER

MODULE CODE : LLB 224
MODULE TITLE : Civil Procedure (Lower Courts)
DURATION : 3 Hours
DATE :
25 NOV 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

Hugo and Groot entered into a lease agreement in respect of Stand 9808 Salisbury Township wherein Hugo was the lease and Groot the lessor. The lease agreement was in operation for six years. Hugo was a perfect tenant, paying rentals on time and maintaining the premises in an immaculate manner. Sometime in January 2024 Groot sold the leased premises to one Wally. Groot informed Wally that there was a tenant on the property and Wally informed Hugo that the tenant should be given three months' notice to vacate. Groot informs Hugo of the developments and gives Hugo notice. Title of the property is passed to Wally through a deed of transfer. The notice period lapses, however, Hugo for reasons best known to himself fails, neglects or refuses to vacate from the lease premises. Wally gives Hugo three months' notice to vacate. Fast forward, the three months' notice lapses and Hugo has not vacated. Wally has approached you seeking legal help.

Advise Wally on his substantive and procedural rights to evict Hugo from his property.

[5

marks]

Question 2

Willard Birds and Armson Sims entered into an agreement of sale in respect of a motor vehicle where 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 please for more time to pay. The seven-day period lapses and no payment is

tendered. Frustrated Willard causes summons commencing action to be issued against Armson in respect of the amount owing. Upon receiving summons Armson properly files a notice of appearance to defend. Willard who has been self-acting approaches your offices for advice in regard to this matter.

Draft the appropriate application to be filed by Willard under the circumstances. **[10 marks]**

Question 3

Tarirai and Mitchell fell in love sometime in 2018. The love relationship led to the parties into staying together at Tarirai's place of residence in Norton. The relationship is blessed with twins Heylee and Gianne. A few months after the birth of the twins Tarirai and Mitchell fell out of love. Tarirai is convinced that Mitchell does not care about the minor children and the children would not cry at night. On various occasions Tarirai would come back home and find the minor children dead sleeping and would think that it is normal. One day Tarirai gets hold of a baby's drinking bottle and when he opens it to his surprise he smells the scent of alcohol. He makes a factual conclusion that Mitchell has been mixing the children's milk with alcohol and hence the reason why the twins would be dead asleep most of the time. Upon this discovery Tarirai and Mitchell have a heated argument. Mitchell then storms out of the house and drives away. Tarirai is left alone with the minor children. Several months later Mitchell starts coming back to visit the minor children on weekends. This state of affairs continues for five years. In October 2023 Tarirai is served with a court application for custody by Mitchell who is demanding custody of the minor children. Tarirai has approached your law offices so that he remains in custody of his minor children

Advise on the procedural courses open to Tarirai. **[5 marks]**

Question 4

Miriam Muno and Ronald Matsi meet at Harare International Conference Center on a day the famous musician Jah Prayza was launching his album. Miriam and Ronald fall in love on first sight. The two become involved in a romantic relationship. Miriam cannot stop smiling when she thinks of Ronald who to her is the epitome of

a perfect husband as he is tall and good looking. Mirriam falls pregnant. She is so elated on this discovery as she thinks of marriage. She informs Ronald and to her utter surprise Ronald is defected and accuses Miriam of being careless and foolish. It suddenly dawns upon Mirriam that Ronald never loved her and that he will not marry her. Ronald pressures Mirriam into aborting the pregnancy, however Mirriam despite her mistake is a Christian and abortion is an aberration to her and she decides to keep the pregnancy alone. Fast forward eight months later Mirriam delivers a bouncing baby boy whom she names Reign. Upon giving birth Mirriam is unable to go to work and falls on hard times. She feels that the father of the child should at least assist her. Mirriam who is a mutual friend approaches you for advice.

Advice Mirriam of her substantive rights and the procedures she should take to have the father of the minor child contribute to the upkeep of the child. **[5 marks]**

Question 5

Gerren has a lavish house in Helensvale a plush suburb in Harare. Gerren built this house with his sweat and blood. The house means everything to Gerren. One day as Gerren is relaxing on the pool side he is informed by his gateman that there were some people who wanted to see him to which Gerren informs the gateman that they should come inside. The people introduce themselves as Deputy Messengers of Court and they serve Gerren with a Notice of Ejectment and they inform Gerren that he should vacate the property within forty-eight hours or else they would remove him by force. Gerren approaches Mark his best friend who is also a seasoned legal practitioner for help. Mark rushes to the Harare Magistrates Court and using the Warrant of Ejectment gets the case number of the case. Mark is shocked to note that there was a default judgment against Gerren. An application for eviction had been filed by one Givemore who stated that Gerren had sold the house to him and refused to give occupation. Attached to the application is a title deed in favour of Givemore. There is a certificate of service which states that the application had been served upon Audrey, the maid at Gerren's place of residence. Mark informs Gerren of his findings. Gerren cries hysterically and informs Mark that he had not sold his house at all and he states that he does not know of any Audrey the alleged maid. Gerren cannot stop crying and he fervently ask Mark for help.

Prepare a write up on the procedural courses which Mark should set into motion to help Gerren realise his substantive rights. **[10 marks]**

Question 6

The Judicial Services Commission has recently informed the public that the Integrated Electronic Case Management System is now going to be effect at all Magistrates Courts in the country.

Discuss the advantages and disadvantages of the Integrated Electronic Case Management System if it is to be adopted at all Magistrates Courts. **[10 marks]**

Question 7

Melody was employed at Sun Gold (Private) Limited as Finance Officer. Melody was dismissed from employment after disciplinary proceedings had been instituted at the workplace. Melody appealed to the Appeals Office at Sun Gold. The appeal was unsuccessful. Melody approached the Labour Court with a review application. The Labour Court found that the disciplinary proceedings at Sun Gold were an affront to the rules of natural justice and sustained the review application and ordered that Melody be reinstated without loss of salary and benefits or alternatively be paid damages in lieu of reinstatement. Sun Gold was aggrieved by the decision of the Labour Court and wishes same to be set aside.

Explain the procedural remedies are available to Sun Gold (Private) Limited to set aside the decision of the Labour Court. **[5 marks]**

Question 8

On the 12th of June 2024 Malvern Gwembe filed summons commencing action against Anesu Bobo at the Harare Magistrates Court for damages in respect of malicious prosecution. Anesu duly entered an appearance to defend and filed her plea. Pleadings were closed. The matter was referred to for a pre-trial conference hearing before a Magistrate. The Magistrate referred the matter for trial. The matters was set down for trial before Esquire Mugabe. Malvern opened his case and called three witnesses. Anesu opened her defence case and led evidence from

herself and closed the defence case. Closing submissions were duly filed. Judgment was delivered on the 30th of September 2024. The court dismissed the claim for malicious prosecution on the basis that Malvern had failed to prove his case on a balance of probabilities. Malvern is aggrieved by the decision of the court through the Magistrate Esquire Gerren Muwishi. Malven instructs you to note an appeal.

Attend to the instructions. **[10 marks]**

Question 9

Distinguish between an appeal and a review. **[5 marks]**

Question 10

Explain the importance of the role of the Messenger of Court in the Magistrates Court. **[5 marks]**

******END OF PAPER******

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