



## ZIMBABWE EZEKIEL GUTI UNIVERSITY

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### FACULTY OF LAW

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#### EXAMINATION PAPER

**COURSE CODE** : LLB305  
**COURSE TITLE** : CLINICAL AND PRACTICAL SKILLS  
TRAINING  
**DURATION** : 3 Hours  
**LEVEL** : 3.1  
**DATE** :

#### INSTRUCTIONS TO CANDIDATES:

1. Answer ALL the two questions from Section A.
2. Answer ANY two questions from section B
3. This is an open book examination
4. Write legibly
5. Start each question on a new page of your answer sheet.
- 6.

**Section A: Answer ALL Questions in this section**

**Question 1**

Section 94 (2) (b) of the Constitution of Zimbabwe (Amendment 20) Act of 2013 provides as follows;

The term of office of the President or a Vice-President extends until—

- (a) he or she resigns or is removed from office; or
- (b) **following an election, he or she is declared to be re-elected or a new President is declared to be elected;**

**and, except as otherwise provided in this Constitution, their terms of office are five years and coterminous with the life of Parliament.**

There have been calls to amend this provision in order to clarify that the President can only hold office for a maximum of ten years, being two five-year terms.

1.1 You are required to do a short opinion on whether it is indeed necessary to add clarity to this provision. Draft the opinion. [5]

1.2. Draft an amendment to section 94(2) (b) that gives effect to the position that that the President can only hold office for a maximum of ten years, being two five-year terms.

[10]

**Question 2**

Imagine the President has refused to sign a Bill into law arguing that he has such powers in terms of section 131 of the Constitution.

Considering the above scenario, describe the options available to Parliament to ensure the Bill is signed into law by the President. [10]

Draft a legal opinion justifying why the powers given to President to refuse to sign a Bill into law may be considered as contradicting the principle of separation of powers. Your answer must refer to relevant provisions of the Constitution (10)

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## SECTION B

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**Answer any two questions in this Section**

**Question 3**

Your client, Makanakaishe Moyondizvo is the daughter of Mr Chen Moyondizvo and Mrs Hamu Moyondizvo who are married in terms of the Marriages Act Chapter 5:11. She stays at number 2 Mhumhi Road, Rujeko in Marondera, a property owned by Mr Chen Moyondizvo who has an agreement of sale with Marondera Municipality.

Mrs Moyondizvo was banished to Mr Moyondizvo's rural home by Mr Moyondizvo who then had proceeded to bring another woman, Shupikai Zongororo, (these days called a small house) to the matrimonial home. Exactly 9 days before his death, Mr Moyondizvo deposed to an affidavit in which he stated that he, together with his current wife, Shupikai Zongororo, were donating his house to his only sister, Omega Moyondizvo.

Mr Moyondizvo subsequently passed away.

Makanakaishe has received summons issued out of the magistrate's court, Marondera at the behest of Omega Moyondizvo the Plaintiff in the matter. The summons which cite one Chipu Moyo, a cousin of Makanakaishe as the Defendant is for the ejectment of the said Chipu Moyo and all those claiming occupation through her from 2 Mhumi Street, Rujeko, Marondera. Chipu left Zimbabwe just after the death of Mr Moyondizvo. Chipu never stayed at this property and Makanaka is not even sure how Chipu ended up being cited as the Defendant in this matter.

The particulars of claim read as follows:

- i. Plaintiff is Omega Moyondizvo, a female adult whose address for service is care of her legal practitioners, Magwenzi and Partners Legal Practitioners of Tselentis Building, The Green, Marondera.
- ii. The Defendant is Chipu Moyo, a female adult currently residing at number 2 Mhumhi Road, Rujeko, Marondera.
- iii. On the 27th September 2017, I became the owner of house number 2 Mhumi Street, Rujeko, Marondera whose rights title and interest were ceded to me by the then owner, Chen Moyondizvo (may his soul rest in peace). I attach as Annexure 1 being a copy of the affidavit deposed to by the said Chen Moyondizvo.
- iv. Since the death of Mr Moyondizvo, I have demanded that the defendant and all those who are staying with her leave the house. This has been ignored.
- v. I therefore pray for an order for the ejectment of the Defendant and all those who enjoy occupation through her.

Wherefore Plaintiff claims:

- a. Ejectment of the Defendant and all those who derive their right to stay at this property through her.
- b. Costs of suit.

3.1 You have been approached to represent Chipu Moyo in this matter. With sufficient justifications, do a legal opinion of how you propose to assist her in anticipation of action from Omega. [12]

3.2. Imagine that summons have been served on Chipu Moyo with the particulars of claim above. Draft the initial necessary papers supporting whatever action you wish to take in response to the summons. [13]

#### Question 4

Your client, Jack and Fieldsand Motor Sales sold and delivered to their customers, Wilber Hope and Inspy (Pvt) Ltd, T/A Little Hearts High School, a 15-seater minibus. The bus was sold on hire purchase for RTGS\$38,400. It was delivered on the 15<sup>th</sup> of January 2017.

The customer paid the sum of RTGS\$8,400 being the required deposit before taking delivery of the bus. The customer was obliged to pay RTGS\$3,000 for 10 months to clear off the balance. However, they only paid \$7,000. Subsequent requests for the balance have been ignored.

Your clients instructed you to issue summons to claim the balance of RTGS\$23,000 which is outstanding together with interest at the prescribed rate and costs of suite.

Upon issuing the summons, the customers through their legal practitioners, Mudzinganyama and Associates entered an appearance to defend the action.

4.1 With sufficient justifications, do a legal opinion of how you propose to deal with this matter. [10]

4.2. Draft the initial necessary papers supporting whatever action you wish to take. [15]

#### Question 5

The Ministry of Lands, Agriculture and Rural Resettlement has commenced a process of identifying individually owned farms for purposes of reducing the sizes of the large farms and distributing them to needy farmers without anywhere to farm. One of the identified pieces of land belongs to John Dube, a black Zimbabwean farmer who has 140 hectares of land he uses to practise cattle ranching. John Dube wishes to resist the Ministry's push to reduce the size of his landholding. You have been given instructions by John Dube to make a court application seeking to interdict the Ministry of Lands and Rural Resettlement from identifying and listing your piece of land for distribution to a group of land hungry farmers.

a) Write a letter to the Permanent Secretary in the Ministry of Lands and Rural Resettlement urging them not to proceed with their actions as it infringes your property rights and will greatly impact adversely on your agricultural activities. [5

marks]

b) While inventing any further necessary facts, list the issues you could include in the affidavit to support the court application by John Dube. [5 marks]

c) Assume that you have served the court application to the Ministry of Lands and Rural Resettlement. Surprisingly, you discover that your firm previously advised the Ministry of Lands and Rural Resettlement in relation to prosecution of farm invaders who were resisting eviction from people's farms in 2012. What would be the courses of action open to you and why after serving the court application? [5 marks]

d) Upon attempting to serve the court application to the Ministry, the Messenger of Court issues a return of service endorsed as follows; "the place is now occupied by the Department of Intelligent Services under the President's Office and they refused to accept service on behalf of the defendant whose new address is unknown. Return to attorney. Explain in brief the procedure you will take to ensure service of the process.

[10 marks]