



SCHOOL OF LAW

NLLB208: CIVIL PROCEDURE (INFERIOR COURTS)

END OF SECOND SEMESTER EXAMINATIONS

APRIL 2025

LECTURER: L. MANYIKA

DURATION: 3HRS

GENERAL INSTRUCTIONS TO CANDIDATES

1. Do NOT write your name on the answer sheet
2. Answer any 4 questions.
3. Candidates may make use of the following material
 - Magistrates Court Civil Rules, 2018
 - Magistrates Court Act [*Chapter 7:10*]
 - Customary Law & Local Courts Act [*Chapter 7:05*]
 - Constitution of Zimbabwe Amendment (No 20) Act 2013
 - Prescription Act [*Chapter 8:11*]
 - Small Claims Court Act [*Chapter 7:12*]

Question one

Mr X is in the business of lending money. He has established his name and has built a reputation in the town of Mutare. Y who wants to start a catering business is in desperate need of money to buy the essentials which are required for starting the business and approaches Mr X for a loan amounting to **USD\$12 000.00**. Y drives a car which his brother gave to him for his convenience. Upon approaching Mr X for a loan, Y is advised that for him to secure the loan, he ought to sign a document in which he acknowledges owing Mr X. In addition, Y is advised that he will not be able to get the loan without offering his car as a surety for the loan. Further, Mr X would charge Y interest at 40% for the amount he sought. Desperate, Y agrees to Mr X's terms, receives the **USD 12 000.00** and goes ahead to affix his signature to the document. The material terms of the document signed by Y and Mr X included the following:

-

- i) That Y unequivocally acknowledges owing Mr Y in the sum of **USD 16 800.00. (amount inclusive of the interest).**
- ii) That the amount was due and payable on or before the 31st January 2025.
- iii) That Y offers his vehicle, a black Honda Fit, registration number ABB 1212, as surety for the amount owed;
- iv) That in the event that Y fails to pay, Mr X will be entitled to sell the vehicle to recover the costs and may institute proceedings in court to recover the outstanding amount after the sale of the vehicle;
- v) That in the event Mr X approaches the Magistrates' Court, Y would be liable to costs of suit at an Attorney and Client Scale.

The day on which Y had undertaken to repay the money to Mr X comes and passes but Y fails to repay the money. Mr X takes the car as agreed on and sells it. The amount he recovers from the sale of the motor vehicle is **USD 4 000.00**. and he decides to institute proceedings against X to recover the outstanding amount. Mr X has approached you for legal advice.

- (a) Of the procedures available to a litigant in instituting proceedings in the magistrates' court, outline the procedure that Mr X will have to use to recover the amount owed by Y. Explain why that procedure is the best in the circumstances. **(13 marks)**

- (b) Advise Mr X on the best course of action in the event that Y chooses to defend Mr X's claim. In your answer, outline the requirements of that course of action and what Mr X will be expected to allege and prove in order to be successful. **(12 marks)**

Question Two

- a) In law, both an exception and a special plea are two types of technical defences or objections that a defendant can raise in response to the other party's pleadings. They are however different in nature. Discuss this statement with reference to relevant legal authority. In your answer discuss the examples of each of the two defences. **(14 marks)**
- b) At what stages can a default judgment be granted against a party during civil litigation? **(5 marks)**
- c) Explain the relief available to a defendant who has a default judgment entered against him/her stating the facts he/she is required to satisfy in order to obtain relief. **(6 marks)**

Question Three

- a) With the aid of relevant authorities, define 'absolution from the instance'. What must the Defendant seeking this relief allege and prove? **(10 marks)**
- b) With reference to relevant authorities, discuss the requirements which must be satisfied for one to succeed in an application for a temporary interdict. **(5 marks)**
- c) What are the options available to a judgment creditor where the judgment debtor has failed to settle the judgment debt? **(10 marks)**

Question Four

- a) What is the procedure of bringing a case in the Chief's Court? **(5 marks)**
- b) Where a Defendant defaults a Chief's Court and judgment is entered against him/her, what remedy is available to him/her? **(5 marks)**

- c) Where the Chief's Court rules in favour of an Applicant, what recourse is available to an aggrieved Respondent. **(5 marks)**
- d) How does a litigant enforce an order of a Chief's Court? **(10 marks)**

Question Five

The action process is divided into four stages, namely; -

- i) pleading stage,
- ii) close of pleading/ pre-trial stage,
- iii) trial stage and
- iv) Execution stage.

Give a brief description of each of the four stages. In your answer please refer to relevant authorities. **(25 marks)**

TOTAL MARKS 100

END OF QUESTION PAPER