



SCHOOL OF LAW

NLLB208: CIVIL PROCEDURE (INFERIOR COURTS)

END OF SECOND SEMESTER EXAMINATIONS

APRIL 2025

LECTURER: L. MANYIKA

DURATION: 3 HRS

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

After years of fighting for the office of village head with Ben his brother, Bob finally decides to institute proceedings in the magistrates' court seeking, amongst other relief, an order declaring him the rightful village head of the Tinosekwa Village, under Chief Chihombiro, Mutare. He tasks his right hand-man, Joe, to serve the summons on Ben at his rural home in Tinosekwa. Joe leaves the summons at the gate of Ben's home and assures his boss, Bob, that he has effected service on Ben.

As to be expected, Ben does not file any appearance to defend and Bob obtains a default judgment against Ben. Five months later, Ben hears rumours to the effect that Bob is the new village head, having obtained an order to that effect in the magistrates' court. Ben has engaged you to institute the requisite proceedings.

- a) Explain to Ben what is wrong, if anything, with Bob's service of summons. Further explain to Ben what constitute proper service of summons. **(6 marks)**
- b) What application, if any, should be done in order for Ben to defend Bob's claim? **(6 marks)**
- c) In the event that the Application in (b) succeeds, advise Ben of the defence he should raise to Bob's claim? **(7 marks)**
- d) What remedy will be available to Ben in the event that the application in (b) is dismissed? **(6 marks)**

Question Two

- a) With reference to relevant authorities, explain the difference between an appeal and review. In your answer, specify if launching an appeal or a review automatically suspends the operation of the judgment under scrutiny. **(12 marks)**
- b) Where a litigant chooses Application proceedings, outline the steps he/she will be expected to take in prosecuting his/her claim to its logical conclusion. **(13 marks)**

Question Three

- a) With reference to relevant authorities, differentiate between a plea in bar and a plea in abatement. In your answer, provide examples of such pleas and explain them. **(13 marks)**

- b) Where the court makes a finding to the effect that material disputes of fact exist in an application, what are the options available to the court in dealing with such a case? (6 marks)
- c) With reference to relevant authority, discuss the requirements which must be satisfied for one to succeed in an application for a spoliation order. (6 marks)

Question Four

You are a legal practitioner practising in Mutare, your client obtained a judgment for payment of US\$6 000 against a judgment debtor who is employed by the Ministry of Education as a teacher. A warrant of execution was issued by the Messenger of Court and upon execution, the Messenger of Court could not find any attachable property.

- a) What method would you use to enforce the judgment debt and why? (3 marks)
- b) Outline the chronological order and the procedural steps involved in giving effect to the method referred to in (i) above. (10 marks)
- c) Assuming that you receive information that the judgment debtor has available funds to satisfy the judgment debt but is evasive and has vowed not to comply with the court order, what remedy is available to the Judgment Creditor to enforce the court order and what are the procedures involved in giving effect to that remedy? (12 marks)

Question Five

In *Mauchaza v Nota* HH 120/12, Gowora J (as she then was) stated the following, “The Magistrates Court is a creature of statute and can only function within the confines of the parameters created by the statute that creates it. It cannot grant itself any powers not afforded to it by the statute....”

Discuss the above statement with special reference to the jurisdiction of the Magistrates Court in civil disputes. (25 marks)

TOTAL MARKS 100

END OF QUESTION PAPER