



AFRICA
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SCHOOL OF LAW
NLLB311: CIVIL PROCEDURE: SUPERIOR COURTS

END OF SECOND SEMESTER EXAMINATIONS

APRIL 2025

LECTURER: ADVOCATE B. MAGOGO

DURATION: 3HRS

INSTRUCTIONS

- 1. Answer ALL questions.**
- 2. Write legibly.**
- 3. Cite relevant authorities to support your answers.**
- 4. Candidates are allowed to use clean copies of the following materials during the examination:**
 - Constitution of Zimbabwe (2013)
 - Constitutional Court Rules, 2023
 - Constitutional Court Rules, 2025
 - Supreme Court Act (Chapter 7:13)
 - Supreme Court Rules, 2018
 - High Court Act (Chapter 6:07)
 - High Court Rules, 2021
 - High Court (Commercial Division) Rules. 2020.

Question 1

1.1 Unlike the Magistrates' Court or Labour Court which are creatures of statute, the High Court's jurisdiction in civil matters is unrestricted.

Explain the correctness of this statement with the aid of case law. **[8 marks]**

1.2 With the aid of case law where possible, outline your understanding of the following principles and how they relate to the High Court's jurisdiction:

- a. *Actor sequitur forum rei*. **[4 marks]**
- b. Doctrine of submission. **[4 marks]**
- c. Doctrine of effectiveness. **[4 marks]**

[Sub-Total: 20 marks]

Question 2

2.1 How do you cite the following in legal proceedings:

- a. Deceased estate.
- b. Government Ministry.
- c. Workers committee.
- d. Minor.
- e. Trust. **[5 marks]**

2.2 With the aid of case law differentiate between a plea in bar and a dilatory one and give two examples of each. **[5 marks]**

2.3 What are the requirements under our common law for:

- a. Joinder of a party to an action.
- b. Substitution of a party in an action. **[5 marks]**

[Sub-Total: 20 marks]

Question 3

3.1 Queen Belani had a child with her boyfriend Ruto Malemo, a Kenyan national who has been conducting his business in Zimbabwe while residing in Mozambique for the past 5 years. Their child was named Victory Malemo by Queen. Although not legally married, they entered into an agreement for the lease of Ruto's haulage trucks to companies in Zimbabwe for the transportation of coal. In terms of the agreement, Queen would provide her marketing and operations services for the business while Ruto availed his three trucks to the business. They would then share the profits equally. Recently Ruto advised Queen that they had made US\$87 000 from the hire of the trucks. Queen requested to be paid her 50% share but Ruto flatly refused arguing that the trucks were his and that Queen was entitled only to US\$2 000 as salary for each of the months that she worked. Queen has approached you for advice and you advise her that it will be prudent to issue a summons for specific performance. Yesterday her friend advised her that Ruto plans to secretly whisk away the haulage trucks to Mozambique, via the Mutare boarder post and to permanently leave Zimbabwe. Ruto has a haulage storage and service facility in that country.

Queen is in a state of panic.

- a. In which court and country can she get the specific performance remedy and why?
- b. What proceedings can she institute to ensure that the court's judgment is not a *brutum fulmen* and in what form can these proceedings be?
- c. Why is the interim relief necessary in light of Section 15 of the High Court Act?

[10 marks]

3.2 In what circumstances does an automatic bar arise in application proceedings in the High Court?

[4 marks]

[Sub-total: 14 marks]

Question 4

4.1 Where an appeal is 'deemed abandoned' for failure to serve a Respondent within time, what are the remedies available to an Appellant? **[3 marks]**

4.2 What steps are taken by an Applicant where a provisional order is granted under the High Court Rules, 2021? **[3 marks]**

[6 marks]

Question 5

5.1 The High court grants a provisional order in favour of Bema on 9 October 2023. Reasons are handed down on 29 October 2023. Meanwhile, Godo, (Bema's opponent) is aggrieved with the judgment. He instructs his lawyer to note an appeal to the Supreme Court on 14 March 2025 challenging the judgment of the judge, Tangent J, which he promptly does.

(a) Explain with the aid of case law whether the instruction is proper. **[10 marks]**

(b) What determination is the court likely to make after considering the matter? **[4 marks]**

(c) What can Godo's lawyers do in order to regularise the appeal? **[5 marks]**

5.2 How are judgments of the Supreme Court executed and by whom? **[5 marks]**

[Sub-Total 20 marks]

Question 6

6.1 Tariro instituted an appeal in the Supreme Court. The judgment of the High Court was stayed from execution. Her lawyers failed to pay security for costs and only did so some two months after filing the appeal.

(a) Explain whether Tariro has a valid appeal before the court and why. **[5 marks]**

6.2 In what circumstances can a party be required to pay costs in the Constitutional Court? **[2 marks]**

6.3 Explain the following

- a. Party to party costs. **[2 marks]**
- b. Costs on a legal practitioner client scale. **[2 marks]**
- c. Costs *de bonis propriis*. **[2 marks]**
- d. No order as to costs. **[8 marks]**

6.4 In what circumstances may a party be required to pay security for costs in the Supreme Court? **[5 marks]**

[Sub-Total: 20 marks]

END OF EXAMINATION