



SCHOOL OF LAW

NLLB311: CIVIL PROCEDURE: SUPERIOR COURTS

END OF SECOND SEMESTER EXAMINATIONS

APRIL 2026

LECTURER: MR C. MUNGUMA

DURATION: 3 HRS

INSTRUCTIONS

1. Answer **ALL questions** from Section A and any two questions from Section B.
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)
 - High Court Act (Chapter 6:07)
 - High Court Rules, 2021

Section A

Answer all questions from this section.

Question 1

H owns a house in Chikanga suburb of Mutare which he leases to Muto. The house is leased as a fully furnished property. The furniture and household goods are valued around \$25 000.

H is employed as a haulage truck driver and is often out of the country on work assignments. When he is not at work H stays at his other property in Yeovil which is his matrimonial home. Unknown to H's wife H borrowed money from a money lender in the sum of \$8000 and failed to pay back resulting in the money lender serving summons at the Chikanga property. Because there was no appearance to defend filed, the money lender obtained a default judgement in the High Court and has instructed the Deputy Sheriff to attach movable property belonging to H. The Sheriff attached most of the household property in the Chikanga property. Muto the tenant tried to call H but could not get through because at that time, H was in DRC in a region where there was no mobile signal. As a result, even WhatsApp messages sent by Muto could not be delivered.

Four weeks later H returned to Zimbabwe, at which point he realised via delivered WhatsApp messages that Muto had been trying to call him. At that point, the Sheriff had already removed the household goods for auctioning. The goods are slotted for a sale in execution in 2 weeks' time. H approaches you intimating his desire to defend the proceedings. He also indicated that:

- a) He paid back a total of \$5000 hence the capital debt could not possibly have remained as \$8000. He avails receipts from the money lender showing that position.
- b) He presents his passport and truck log book which shows that indeed he was in DRC during the relevant time and only re-entered Zimbabwe 2 days ago.
- c) The return of service in the case shows that summons was served on Muto at the Chikanga property.
- d) Muto confirms that summons was served on him and that he tried to advise H but could not get through to him.

- I) Discuss the steps you will take to protect H's interests in the above case. In your discussion expose H's chances of success in the case. **[20 Marks]**
- II) Is there anything that can be done to ensure that the Deputy Sheriff does not proceed with the execution in the meantime? **[5 Marks]**

Question 2

X through his legal counsel wrote a letter of demand to A in which he instructed A to vacate a piece of land he was farming. X claimed that he bought the land from P but he had no title to it. He threatened litigation if the demand was not met. A responded to the demand through a letter where he explained that he had a lawful basis to use the land in question having bought it from a cooperative that was the owner. A attached a number of documents to his letter. These documents included the agreement of sale between A and the cooperative, a sub-division permit and receipts for payments made by A to the cooperative society. The parent deed of transfer for the property clearly showed that the cooperative was the owner of the land and not P.

Notwithstanding the explanation by A, X through his legal practitioners proceeded to issue a High Court application for eviction and payment of holding over damages. On receiving the application, A's legal counsel formulated the view that the matter had irreconcilable disputes of fact. Before filing a notice of opposition they wrote to X's lawyers explaining that they had used wrong procedure since there were disputes of fact in the case. X's lawyers arrogantly responded that they had used the correct procedure and that A's lawyers should file their defence lest they would obtain a default judgement against his client. A's lawyers proceeded to file and serve their notice of opposition. Among other things they raised a point *in limine* that there were irreconcilable disputes in the case and sought its dismissal on that basis since X was aware of such disputes.

During the hearing of the application it became apparent to all the parties and the court that there were material disputes of fact which could not be resolved even if the court tried to take a robust approach to resolving it.

The disputes that were apparent were as follows:

- a) The ownership of the land.
 - b) Whether P had had any rights to the land that he could transfer to X.
 - c) Whether holding over damages could be claimed.
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- i) As the court handling the matter and **given the routes** that are provided by the High Court Rules, render your judgement in the matter. The judgement must clearly show why the other options provided by the rules are not suitable in this case. **[20 Marks]**
 - ii) Your client was involved in a Road Traffic Accident. The other party, who was at fault, is a sixteen (16) year old and was driving his father's motor vehicle with the father's consent. The 16-year old's vehicle was not insured at the time. Who in the circumstances does your client cite in the claim for damages and why? **[5 Marks]**

SECTION B

Answer any two questions from this section.

Question 3

You are instructed to defend an action in which your client has been served with summons issued in the High Court. The *dies induciae* has expired but the Plaintiff has not yet taken any further steps in the matter.

- (a) Explain what you need to do to ensure that your client is able to defend the action. **[5 Marks]**
- (b) Would your answer be different, if the matter was in the Magistrates Court as opposed to the High Court? **[6 Marks]**
- (c) Distinguish between the civil jurisdictional limits of the Magistrates Court and the High Court **[10 Marks]**
- (d) Explain whether the Labour Court can grant ordinary civil remedies between employers and employees? **[4 Marks]**

Question 4

1. R. Matsikidze has argued that the rules of procedure in the Magistrate Court are a disservice to self-actors. Explain how the concept of rule of law is connected to rules of court or court procedure generally? **[10 Marks]**

2. Explain how the following principles relate to the High Court's jurisdiction:
 - a. *Actor sequitur forum rei*. **[4 Marks]**
 - b. Doctrine of submission. **[4 Marks]**
 - c. Doctrine of effectiveness. **[3 Marks]**

3. What considerations does a court take into account in deciding an application for amendment of pleadings? **[4 Marks]**

Question 5

Emma and Tatenda are Zimbabweans who got married in Portsmouth United Kingdom 7 years ago. Both parties still consider Zimbabwe as their permanent home. In that regard they have bought both movable and immovable properties in Zimbabwe. During either Christmas or Easter holidays, they have consistently travelled home to Zimbabwe.

The parties have 2 minor children aged 7 and 3 years. Both children are girls. After a happy marital relationship for 5 years the parties are now estranged. This was after Tatenda lost his high paying job in the UK. Emma remained as the family breadwinner for a whole year. Accusations and counter accusations began to fly between the parties with each blaming the other for not contributing to the family's finances, adultery and neglect. After a year without a job in the UK, Tatenda returned to Zimbabwe where fortunately for him, he got a job at Old Mutual as the Chief Financial Officer. Despite Tatenda's attempts to ask Emma to move back to Zimbabwe, she refused.

The parties have not shared board and bed for a year now. The husband believes that the way they are living is not compatible with a normal marriage. Tatenda now wants a divorce and has engaged a Zimbabwean law firm to institute divorce proceedings.

- a) Which court between the United Kingdom one and the Zimbabwean High Court, has jurisdiction in the matter and why? **[4 Marks]**
- b) What ground(s) of divorce can Tatenda raise in the case? **[4 Marks]**
- c) Assuming that Tatenda is the one who bought all the properties of the parties in Zimbabwe while Emma bought the properties located in the UK, how will the properties of the parties be divided between the parties by the divorce court? **[10 Marks]**
- d) Assuming that after Tatenda left the UK, Emma changed her place of residence such that the Sheriff of that country cannot serve her with process. How will Tatenda's lawyers effect service on her. **[7 Marks]**

Question 6

- a) What is summary judgement? Discuss the instances where summary judgement could be available to a party in the High Court? **[10 Marks]**
- b) How is an application for summary judgement different from an ordinary court application before the High Court? **[5 Marks]**
- c) What are the essential elements that must appear on a Notice of Appeal to the Supreme Court? **[8 Marks]**
- d) Identify the type of constitutional matters that the High Court is not empowered to handle in Zimbabwe. **[2 Marks]**

End of Examination Paper