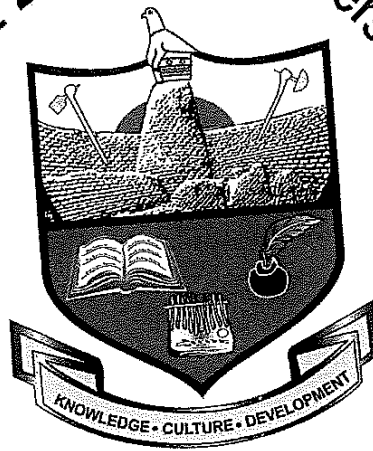


Great Zimbabwe University



HERBERT CHITEPO LAW SCHOOL

BACHELOR OF LAWS HONOURS DEGREE

LEVEL 3 SEMESTER 1

EXAMINATION QUESTION PAPER

MODULE CODE

LLB 315

MODULE NARRATION

CIVIL PROCEDURE II

DATE

NOVEMBER 2024

DURATION

3 HOURS

INSTRUCTIONS TO CANDIDATES

1. This examination paper consists of 7 questions.
2. Answer all questions in section A, One question from section B and one question from section C.
3. All your answers must be supported by relevant authority.
4. Candidates are permitted to enter the examination room with clean, unannotated copies of the High Court Act [Chapter 7:06], High Court Rules, 2021, (as amended) and the Constitution.

c) Thandy Mabhiza is married to Mr Jay Jay in terms of the Marriages Act [*Chapter 5:17*]. The two of them own a house in the Majange residential suburb of Masvingo. Their marriage is however an unhappy one due to endless squabbles over allegations of infidelity. Thandy has since filed for divorce with the High Court at Masvingo. Yesterday she learnt that Mr. Jay Jay intends to sell the Majange property to Tiller key and that the agreement of sale is set to be signed the day after tomorrow. Thandy informs you that as far as she is concerned the sale of the house is intended to prejudice her in the division of assets upon the divorce which is imminent. She therefore would like to find out if she can obtain an order as quickly as possible to stop the sale and maintain the status quo until the divorce matter is concluded. Advise Thandy what the court will consider in deciding whether or not to hear her application on an urgent basis. **[4 Marks]**

d) Saint Plow is a student at Great Zimbabwe University pursuing a degree programme in Law. He was brought before the University's *ad hoc* disciplinary Committee on allegations of leading a violent student demonstration at the university. The demonstration was aimed at airing the students' grievances on the failure by the University to obtain Starlink internet kits for the students to address internet connectivity challenges. The *ad hoc* committee found him guilty and suspended him from the University for two years.

The Great Zimbabwe University Regulations provide that any student aggrieved by the decision of the disciplinary Committee can approach the High Court for relief. Saint Plough is particularly aggrieved by the procedure adopted at the hearing. He claims firstly that the *ad hoc* disciplinary committee has no jurisdiction to entertain the disciplinary hearing, as this is the exclusive preserve of the "permanent" disciplinary committee and that the entire *ad hoc* disciplinary committee was biased against him in a number of ways. Saint Plow is however unsure if he should appeal against that decision to the High Court or lodge a review. Advise him. **[4 Marks]**

The lease agreement was entered into in July 2023 and its main terms are that the rent is US\$1000 per month payable in advance on or before the 4th day of each successive month. The duration of the lease is 24 months.

Lately, however, the PGC has been experiencing serious cash flow problems and has been struggling to meet its financial obligations including the payment of rent to the Moyo Family Trust. It is now four months in arrears with no foreseeable prospect of settling its indebtedness.

The Moyo Family Trust has now instituted an application in the High Court sitting at Masvingo seeking against the PGC seeking an order for the payment of the outstanding arrear rentals and its eviction from the premises in question.

The application is opposed by PSC. In its opposing affidavit it is averred by PSG that in a meeting held between the parties, the trustees verbally waived the payment of rent for a period 6 months on “compassionate” grounds. This is denied by the Trustees in their answering affidavit. In addition, raises three points *in limine*, namely:

- i) That the Moyo Family Trust is not a legal persona and as such has no locus standi to institute the proceedings
- ii) That the PGC has been wrongly cited as it too lacks *locus standi in judicio*.
- iii) That the applicant adopted the wrong procedure as it should have proceeded by way of action instead of application.

You are the legal practitioner acting for the applicant, advise the applicant, briefly on each of the following:

- a) Whether a Trust has the right to sue or be sued. [4 Marks]
- b) The requirements that have to be satisfied before an association of persons such as the PGC can be said to have *locus standi in judicio*. [3 Marks]
- c) The test that the court will use to determine whether the matter should have proceeded by way of action or by way of application. [4 Marks]
- d) The options that are available to the court in the event that it finds that the applicant ought to have proceeded by way of action instead of application. [4 Marks]

END OF EXAMINATION PAPER
