



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.

SECTION A: ANSWER ALL QUESTIONS [40 MARKS]

QUESTION 1

Briefly explain the circumstances under which the court may grant each of the following:

- a) A motion to strike out. **[4 Marks]**
- b) An application for summary judgment. **[4 Marks]**
- c) An application to amend summons. **[4 Marks]**
- d) An order upholding the special plea of *lis alibi pendens*. **[4 Marks]**

QUESTION 2

Briefly distinguish between the following:

- a) An exception and a special plea. **[4 Marks]**
- b) Application and action procedure. **[4 Marks]**

QUESTION 3

You are a legal practitioner based in Masvingo. You have been approached by the following clients for legal advice in their respective cases. Give concise advice to each.

- a) Rumbidzai Lee (Nee Makoni), a female Zimbabwean citizen would like to find out if the High Court of Zimbabwe has the jurisdiction to hear her action for divorce from her Chinese husband Bruce Lee who has practically deserted her and has returned to Guan Zhong, China. Their marriage was solemnized at Shurugwi Magistrates Court in 2019. At that time Mr. Lee was operating a gold mine in that area. **[4 Marks]**

- b) A group of villagers from the Chiromo village of Zaka would like to obtain an order restraining Bambazonke Mining Company from continuing with its illegal mining operations in their area. They have heard from someone that they have to apply for a final interdict. They have also learnt that in order to succeed they have to establish a “clear right”. They have no idea what “clear right” means or entails. Advise them. **[4 Marks]**

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]

SECTION B: ANSWER ONE QUESTION ONLY 15 MARKS

QUESTION 4:

Section 14 of the High Court Act, [Chapter 7:06] provides as follows:

“The High court may in its discretion, at the instance of any interested person inquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim consequential relief upon such determination.”

Discuss how the courts have interpreted and applied this provision.

[15 Marks]

QUESTION 5

“Discuss the doctrine of effectiveness in proceedings against a peregrine defendant in claims sounding in money.

[15 Marks]

SECTION C: ANSWER ONE QUESTION ONLY 15 MARKS

QUESTION 6:

The Moyo Family Trust was founded by Professor David Moyo of the Great Zimbabwe University and his wife Elizabeth. Its trustees for the time being are George Maringa, Mildred Matutsa and Fred Chabodo. According to its deed of trust the main objective of the trust is to set up a vehicle through which to raise and maintain a fund for the children and grand children of Prof and Mrs Moyo. Further in terms of the deed of trust, the trustees have the power to acquire, dispose or let out property with a view to maintaining a viable financial base for the trust.

The trust has a sizable portfolio comprising several movable and immovable assets. One of the properties in question is a double-storey building in Mavingo’s CBD. Currently that property is being leased to the Prosperity Gospel Church (PGC) led by its rather flamboyant pastor, “Apostle” Prosper Gutu.

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]**

QUESTION 7

You are a legal practitioner operating in Masvingo. Mr. Munonoki approaches you in your chambers with a matter he perceives to be of grave concern. He informs you that he has learnt that a default judgment was granted against him by the High Court sitting at Masvingo on 30 August 2024. The default judgment was in respect of a claim brought by Mrs Magaisa for the recovery of the sum of US\$10 000.00

Mr. Munonoki further informs you that when summons was served at his residence in June 2024 he and his entire family were in France for the 2024 Summer Olympics held in Paris. He therefore did not receive the summons at all and only found out about it when the deputy Sheriff came to attach some of his movable goods to satisfy the judgment debt.

You peruse the documents brought by Mr Munonoki and observe from the summons and the declaration attached thereto that the claim relates to an agreement of sale in which Mr. Munonoki purchased a Honda Vezel motor vehicle from Mrs. Magaisa for the sum of US\$16 000. The agreement of sale was entered into in December 2023. Pursuant to that agreement of sale, Mr. Munonoki paid the sum of US\$6 000 as deposit, it being agreed that the balance was payable on or before the 30th of March 2024.

Mr. Munonoki informs you that after paying the deposit and taking possession of the Honda Vezel motor vehicle he discovered that it had a serious latent defect in that it had a cracked engine block and that is why he decided not to pay the balance. He also informs you that he brought this to the attention of Mrs. Magaisa who refused to take back the motor vehicle and to refund him the deposit. He further informs you that before he left for Paris he had intended to sue Mrs. Magaisa for the cancellation of the agreement of sale and the return of his deposit.

- a) Advise Mr. Munonoki what legal steps he must pursue in order to have the default judgment rescinded and what needs to be satisfied for him to succeed. **[6 Marks]**
- b) In the event that he succeeds in a) above, what he needs to do to firstly to defend the suit brought by Mrs. Magaisa and secondly assert his right in relation to the cancellation of the agreement of sale and obtain a refund of the deposit. **[6 Marks]**
- c) Explain to Mr. Munonoki if he is able to recover the legal costs should he ultimately succeed in the proceedings brought under b) above. **[3 Marks]**

END OF EXAMINATION PAPER
