



## UNIVERSITY OF NAMIBIA

FACULTY	LAW		
DEPARTMENT	Private and Procedural Law		
SUBJECT	Civil Procedure		
SUBJECT CODE	LPCI 3771		
DATE	May/June 2020		
DURATION	Three (3) Hours	MARKS	100

### Winter Examination

**Examiner:** Ms. I.N. Hamulungu

**Moderator:** Prof. H. Chitimira

**This question paper consists of 4 pages, including the cover page.**

#### **Instructions:**

- 1) Read carefully and understand the question before answering.
- 2) Candidates are required to refer to authority where necessary.
- 3) All questions in Section A are compulsory. You should only answer **ONE** question from Section B.

## SECTION A: COMPULSORY

### QUESTION 1: MAGISTRATES COURT PRACTICE

- 1.1. Name any five (5) causes of action that are specifically excluded from the jurisdiction of Magistrates Courts? [5]
- 1.2. Explain what is execution? [5]
- 1.3. Discuss summary judgement in the Magistrate's court. [15]
- 1.4. The Magistrates court is a creature of statute. With reference to jurisdiction in the Magistrates court, explain what creature of statute means. [5]
- 1.5. Name and discuss three types of service in the Magistrate's court. [5]

**TOTAL: 35 MARKS**

### QUESTION 2: HIGH COURT PRACTICE

- 2.1. Discuss the following special pleas:
  - (i) Special plea of prescription [5]
  - (ii) Special plea of *lis pendens* [5]
  - (iii) Special plea of *res iudicata* [5]
- 2.2. Discuss what are costs. In your answer you should identify the types of costs that may be awarded by a court. [10]
- 2.3. What are the options available to a Defendant when the Plaintiff files a summary Judgment application? [5]
- 2.4. Discuss doctrine of effectiveness [5]

**TOTAL: 35 MARKS**

## **SECTION B: OPTIONAL**

Only answer ONE question from this section.

### **QUESTION 1**

Your client Mr. Erol Angula, a building contractor consults you and tells you that he entered into a written building contract with Mr. John Haufiku. The building contract was signed in Tsumeb and the building work took place at Mr Haufiku's vacant plot situated at no. 20 Meteorite Street, Tsumeb. During consultation, Mr. Angula tells you the following:

- He was served with a summons in terms of which an amount of N\$20 000.00 is claimed from him for damages arising from the building contract.
- The Particulars of Claim does not indicate how the amount of N\$20 000.00 is made up and arrived at and Mr. Angula also has no idea how the amount claimed from him is made up and arrived at.
- The Particulars of Claim also does not indicate whether the contract between Mr. Angula and his client is written or oral.
- Mr. Angula further shows you a building contract that indicates that all disputes concerning the building works must be referred to arbitration. He also informs you that to date, no arbitration has taken place. He was just served with the summons.

#### **Advise your client Mr. Angula on the following issues:**

- 1.1. Which court will have jurisdiction to hear this matter? Provide reasons for your answer. [2]
- 1.2. What type of notices and/or pleading/s will you file on behalf of Mr. Angula taking into account the above set of facts? Provide reasons for your answers. [5]
- 1.3. With reference to the appropriate Rules of the Magistrate's Court indicate the time periods during which you will file these notices and/or pleadings. [8]

- 1.4. Section 40 of the Magistrates' Court Act 32 of 1944 prohibits the splitting of claims. With reference to case law, explain the improper splitting of claims.[10]
- 1.5. What are the sources of civil procedure? [5]

**TOTAL: 30 MARKS**

## **QUESTION 2**

Ms. Tina Turner and her husband divorced in June 2018. The divorce was undefended; as such the parties have entered into a settlement agreement pertaining to the division of the joint estate and the custody of the minor child. The settlement agreement was made an order of court. The divorce order was granted on the 17th of June 2018. The effect of the settlement agreement was that Mr. Tony Turner would have sole custody of the minor child. Further, Mr. Tony Turner would pay out Ms. Tina Turner of their jointly owned marital home in order to avoid the sale of the property. The marital home was valued at N\$ 600 000.00. Ms. Tina Turner is entitled to N\$ 300 000.00. The amount of N\$ 300 000.00 was to be paid to Ms. Tina Turner not later than 90 days after the divorce has been granted. It is now March 2020, and Ms. Tina Turner is yet to be paid her settlement amount by her ex-husband. Ms. Tina Turner heard some rumors that she can apply to court to have some properties of Mr. Tony Turner sold to pay her. Ms. Tina Turner has approached you as her attorney in order to secure her rights.

- 2.1. Advise Ms. Tina Turner as to what proceedings she must institute in the High Court. Clearly set out the procedure involved. [10]
- 2.2. Which rules in the High court provides for the execution against immovable property? [2]
- 2.3. Name and discuss the two forms of prescription as provided for in the Prescription Act 68 of 1969. [10]
- 2.4. Name the three most important functions of pleadings. [6]
- 2.5. What is an interdict? [2]

**TOTAL: 30 MARKS**

**TOTAL MARKS: 100**

**END OF PAPER.**