



## 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

### Supplementary 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

### QUESTION 1: HIGH COURT PRACTICE

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.

- 1.1. Advise Ms. Tina Turner as to what proceedings she must institute in the High Court. Clearly set out the procedure involved. [10]
- 1.2. Explain what is execution? [5]
- 1.3. Which rule in the High court provides for the execution against immovable property? [2]

The rules of the High Court in Rule 51 stipulate that once either party has joined issue without alleging new matter or the court has declared that the pleadings have closed, pleadings will be considered closed. Once the pleadings have closed in action proceedings, the parties begin the process known as preparation for trial. The parties therefore have to discover any evidence (documents, tape recordings, plans, diagrams e.t.c.).

- 1.4. What is discovery? [3]
- 1.5. What is the rationale behind discovery? [3]
- 1.6. A (the plaintiff) who is a party to the proceedings against B has documents in his possession which he has not discovered. Explain whether will be able to use these during the trial? Why? [3]
- 1.7. What would you advise B to do in order to ensure that A discovers the said documents? Substantiate your answer with authority. [5]
- 1.8. Discuss *locus standi*? [4]

**TOTAL: 35 MARKS**

## QUESTION 2: MAGISTRATE'S COURT PRACTICE

- 2.1. Discuss arrest *tanquam suspectus de fuga*. Refer to authority [8]
- 2.2. What are section 65 proceedings? [8]
- 2.3. What is *litis contestatio*? [5]
- 2.4. Which rule in the Magistrates court provide for service? [1]
- 2.5. Discuss amendments in the Magistrate's court. Substantiate your answer with authority. [8]
- 2.6. Distinguish between "appeal" and "review" and outline any four (4) grounds for review. [5]

**TOTAL: 35 MARKS**

## **SECTION B: OPTIONAL**

Answer only ONE question from this section.

### **QUESTION 1**

- 1.1. Discuss summary judgement in the Magistrate's court. [15]
- 1.2. What is an interdict? [2]
- 1.3. Identify affidavits that may be used in an application proceeding. [3]
- 1.4. Discuss the common law principles underlying jurisdiction in the High Court.[10]

**TOTAL: 30 MARKS**

### **QUESTION 2**

- 2.1. Discuss the process set out in Rule 61 of the High Court. [10]
- 2.2. what is a special plea? [5]
- 2.3. Discuss what are costs. In your answer you should identify the types of costs that may be awarded by a court. [10]
- 2.4. What is dies non? [5]

**TOTAL: 30 MARKS**

**TOTAL MARKS: 100**

**END OF PAPER.**