

COUNCIL OF LEGAL EDUCATION.



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.**

ATP 107: CONVEYANCING

WEDNESDAY 17TH APRIL, 2024.

DURATION: 3 HOURS

Instructions to Candidates:

- (a) This paper contains FIVE (5) printed pages including the cover page, with a total of SIX questions.
- (b) A candidate MUST answer FIVE (5) questions.
- (c) Question ONE is compulsory and carries 20 marks.
- (d) All other questions carry 10 marks each.
- (e) Answers MUST be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

- A. Jeconiah Moscovitch is a Yugoslavian business man in the hospitality industry. He has established mega hotels, resorts and campsites around the globe in partnership with native associates and friends. He recently landed in Kenya and set out on an African Safari with his associates through the Maasai Mara. They drove through Narok East approximately 200km from the Lewa Conservancy where they found a very rich and vast indigenous forest belonging to Kitiliki Community spanning to tens of thousands of acres. They noted a few wild animals roaming through the forest and decided to set camp for the night.

In the morning, Jeconiah's team spoke with the local Maasais who confirmed that the land is community land owned by the Kitiliki Community. Jeconiah and his associates love the forest and want to set up a campsite in this region, through a registered lease for forty (40) years. They also wish to enjoy exclusivity as against any other potential campsites but the locals are only willing to demarcate 2,000/- acres with painted wooden pegs because there are other campsites and a section where the locals reside. They are also expected to conserve the environment through all means possible and create jobs for the local tour guides or morans willing to accompany the tourists through the forest.

- i. They have approached your offices seeking a legal opinion on the procedure to be followed to obtain a lease over the said parcel of land. Proceed and advise. **(6 marks)**
 - ii. Upon further probe, you have realized that the ministry of lands, in conjunction with the National Land Commission, is in the process of demarcating the residential region for the community as well as processing freehold titles for the individual community members. In light of these developments, discuss the steps to be followed in privatization of the community land. **(5 marks)**
- B. Nyadwe bought twelve and half acres of freehold land contained in five titles back in the year 1996. He was working as a farm manager for his employer but his salary could not be able to settle the sum of Kshs. 4,500,000/= being the purchase price. After a lengthy discussion with his employer, Mr. Brown, agreed to settle the purchase price for him on condition that he includes his name on each title until the entire sum is deducted. They agreed and titles were processed. He was also deducted a sum of 35,000/= per month until the year 2015 when the loan was fully settled. He has instructed you to write to Mr. Brown and demand for the removal of his name from the land register.

- i. Upon carrying out an official search on nature of ownership, three of the five titles read 'equal shares' while the rest simply read two names but remain silent as to nature of ownership. Explain to Mr. Nyadwe the implication of the two scenarios on his claim for removal of Mr. Brown.
(4 marks)
- ii. Thereafter, you write to Mr. Brown, who is also custodian of the titles, to surrender the original titles but the family lawyer responds indicating that the old man rested a few weeks prior to your letter but his youngest son had a power of attorney which he can use in his place to respond.
 - a) Discuss the effect of a power of attorney in the circumstances.
(2 marks)
 - b) Explain the process for removing a deceased co-owner from the five titles.
(3 marks)

QUESTION TWO

- a) The Government of Kenya plans to expand Nairobi-Nakuru-Eldoret-Malaba Road beyond the initial road reserve to build a superhighway. The implication of this is that the Government will acquire additional land for this project. You are a legal officer working at the National Land Commission. Advise the Commission on the factors to be considered in making compensation to the affected persons.
(5 marks)
- b) Martin is a resident of Kitengela township and has identified a plot measuring 50 m by 100 m within Kitengela township. The Plot is going for One Million Four Hundred Thousand Kenya Shillings (Kshs. 1,400,000/=) according to the information provided by the real estate agent. In addition, Martin has approached Kenya Commercial Bank for financial accommodation in purchasing the plot. You are a legal officer employed at Kenya Commercial Bank. Provide a legal opinion to the Legal Manager of the Bank, focusing on the main points, on what should be done to protect the Bank's interests in the contemplated transaction.
(5 marks)

QUESTION THREE

Nyan and his wife Anita entered into a sale agreement for the purchase of land registration number MAVOKO TOWN BLOCK 2/6528. It is dated 20th June, 2018 and the purchase price was agreed at Kshs. 6,500,000/= with a deposit of Kshs. 4,500,000/=. The good couple paid the said deposit and waited for the Vendor to subdivide the property to excise a quarter of an acre and transfer to them in exchange for the balance

of the purchase price. Unfortunately, that has never happened to date despite the purchasers' follow-up with the area Chief, police and deputy county Commissioner. They have only one desire: settle the balance and receive a title registered in their respective names.

- a) Explain the procedure to ensure the property is immediately secured so as to have their legitimate expectations met. (5 marks)
- b) Upon carrying out an official search against the contract property you realize that the property was indeed subdivided and a portion sold. However, there is a quarter an acre remaining and the historical search shows an entry made in the year 2022 a few months after the police report declaring the title deed lost. Two years later and the record is the same but the Purchasers remain intent on acquiring the land against all odds. Advise them on how they can fulfil their desire in view of the fact that the Vendor is still unresponsive. (5 marks)

QUESTION FOUR

- a) Makao Bora Ltd is a real estate company that has a reputation of delivering residential units to its customers. Last year, it took a loan of Ten Million Kenya Shillings (Kshs. 10,000,000/=) and acquired Kiambu Block 193/539 measuring approximately 10.34 acres or thereabouts. They intend to construct residential apartment blocks on the land. Having taken a loan to purchase the land, they are averse to taking another loan to construct the apartment blocks. Advise Makao Bora Ltd on the option available to them to finance the contemplated project and bring it to fruition. (5 marks)
- b) Ben owns two plots; A and B, each of which measures 50 m by 100 m. Block B is adjacent to Limuru Road. Block A abuts block B on the eastern side towards the road. Block A adjoins Daniel's plot on the west, Mike's plot on the North and border's Yvonne's plot on the south. Ben has agreed to sell and Ian has agreed to buy Block A. Advise Ian on his rights in the disclosed circumstances. (3 marks)
- c) Explain the instance in which the right in (b) above would terminate. (2 marks)

QUESTION FIVE

You have been instructed by Eastern Finance Ltd (your client) to provide legal services in respect to the following matter. Peter approached your client for financial accommodation to the tune of Kshs.2 Million that was to be secured over registration of a charge on a title known as KAKAMEGA/KAKAMEGA/2900. Your client issued a letter of offer to Peter, which Peter signed his part therein, and he was required to deposit the title of the property, pending registration of duly executed instruments of charge in order to access the funds. Peter deposited the title and duly executed the instruments of charge. Your client has since learnt that Peter has passed on, and the instruments of charge are yet to be registered.

- a) Explain the nature of the interest that your client may have in respect to the said property. (2 Marks)
- b) Explain the immediate step that your client must take in order to be able to claim the advanced amount. (3 marks)
- c) Discuss the critical steps that your client must take in order to realise the security, if any, in the property. (5 marks)

QUESTION SIX

Farida purchased a parcel of land at Biri Shopping centre in the year 2011 through an allotment letter number NOONKO TRADING CENTRE 119. She unfortunately met her death ten years later after only managing to pour construction material. Amelia, her daughter does not wish to proceed with the project or retain the property. She has found a buyer, Mwajuma, who wishes to seek financing to settle the agreed purchase price. In the circumstances, the two individuals have approached your offices seeking legal guidance on-

- a) Procedure to be followed in authenticating ownership and enablement of Amelia to sell the said piece of land. (5 marks)
- b) In the meantime, Mwajuma has also approached the bank for loan approval to cover the balance of the purchase price. However, the Bank has declined on the premise that he must first transfer it to himself then convert it to certificate of lease or get a title against whose register a charge can be registered. Explain to Mwajuma the procedure to be followed in converting the letter of allotment to a certificate of lease. (5 marks)

