

COUNCIL OF LEGAL EDUCATION.



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

ATP 107: CONVEYANCING

WEDNESDAY 22ND MARCH, 2023.

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. Maseno Developments Limited (hereinafter referred to as “Maseno Developments”) have purchased a property from the Patel family. The property comprises 1 acre of land in Jaba Estate in Nakuru City and has been the Patel’s family home for many years. Maseno Developments would like to develop 50 high end apartments for sale. Construction is due to commence in March 2023 and complete in December 2024. You have been instructed by Maseno Developments to represent them in all legal deliverables relating to the project.

I. You have reviewed the title to the property and noted that the permitted use is a single dwelling unit. Discuss what your client should do to be permitted to develop multiple dwelling units. (8 Marks)

II. Maseno Developments would like to understand how apartments are titled. The CEO recently attended a webinar on sectional properties but is unclear on how to proceed. Advise your client on the process of issuance of sectional titles for each of the apartments. (6 Marks)

B. Ericksen is newly married to his childhood sweetheart Angie. They have been staying in Mihang’o in Utawala. He has decided to find an apartment in Lavington to live with his newly wedded wife. He has been lucky to find a three-bedroomed apartment in Lavington owned by Arthur Johnson. Arthur Johnson has agreed to sell and Ericksen as agreed to buy the apartment for Eighteen Million Kenya Shillings (Kshs. 18,000,000/=). Ericksen has made arrangements with XYZ Bank for financial accommodation of the entire agreed amount to enable him purchase this apartment number B5 erected on LR No. 119/537.

Arthur Johnson has been referred to you by your former Pupil Master to handle the transaction. As Arthur Johnson’s advocate, proceed to draft the relevant initial legal document that will govern the relationship between Ericksen and Arthur Johnson. (6 Marks)

QUESTION TWO

Prime Property Ltd is the registered owner of the leasehold property known as LR/500/12998 located within Nakuru city. The property is located in a busy part of town, undeveloped and well-fenced with barbed wire. The annual rent payable is peppercorn on demand, and is for a term of 99 years from 1st November, 2001.

The company has been approached by Albert, who proposes to utilize the said property as a parking lot. The company approaches you for legal advice on the transaction and has informed you as follows:

- i) The Company is hesitant to have the use of the defined premises for a period in excess of one (1) year, but may be subject to renewal for a similar term.
 - ii) The Company prefers that Albert collects the daily parking fees and deducts an agreed commission fee from the revenues collected.
 - iii) The company prefers that Albert maintains the parking lot in a good condition for the entire period and keeps proper records and books of accounts at all times.
- a) Explain two possible ways that you may consider in structuring the transaction between Prime Property Ltd and Albert, noting the pitfalls of each one in protecting the interests of the company. (4 Marks)
 - b) Explain how you would go about the transaction to ensure that it is not a controlled tenancy. (3 Marks)
 - c) Albert requires that a rates clearance certificate be furnished before he can proceed with the transaction. Advise your client on the import of this statement. (3 Marks)

QUESTION THREE

- A. Andrew was born and raised in Butere in Kakamega County. While growing up, he noted that mothers and their children travelled many kilometres to seek medical care in various places including Kakamega, Mumias and Bungoma towns. Sadly, some patients died on their way to hospital due to poor road network and the long distances. He has in his prime age, partnered with American friends to set up a state of the art hospital in Butere town where the residents are mainly sugarcane farmers. He has done this to alleviate the plight of the residents of Butere. He has identified 50-acre parcels of land owned by the cane farmers that he would want to use to set up the hospital.
- You have received instructions from Andrew to advise on this transaction as his advocate. You have noted that five farmers lost their titles. Advise Andrew on the process you will follow to obtain the lost titles. (4 marks).
- B. You have received instructions from Kenya Commercial Bank, to recover a non-performing loan by selling land used as security for the loan via an auction.

- i. What are the considerations you will take into account in instructing an auctioneer to carry out this work? (3 marks)
- ii. Advise on the steps your client and the auctioneer are by law required to take to ensure that the intended process is regular and lawful. (3 marks)

QUESTION FOUR

The Kim family has lived in Bora Estate in Nairobi for the past 6 years having bought the house through partly family cash savings and partly by way of a loan from Baraka Housing Finance. Mr. Kim while speaking to a colleague at workplace learnt that titles within most parts of Nairobi, including Bora Estate are required to be converted to a new form of title and that the process is time bound. The Kim family has approached you asking to understand the nature of this requirement and what they should do to comply with the same.

- a) How will you establish whether the Kim's family title requires conversion and what is the basis of conversion? (2 Marks)
- b) Discuss the process of conversion of titles from titles issued under the repealed land laws to a title issued under the Land Registration Act, 2012. (5 Marks)
- c) The title to the Kim family home is encumbered by a Charge in favor of Baraka Housing Finance. How will you convince Baraka Housing Finance to release the original title for purposes of conversion? (3 Marks)

QUESTION FIVE

- A. Oceanview Ltd has developed a block of 40 flats on their parcel of land known as Kilifi/Kikambala/330 located in Kilifi county. The flats have a beautiful view of the Indian Ocean and the company is proposing to sell off some of its interest in the property.

The directors of the company have approached you for advise on which model between fractional ownership and sectional ownership would be appropriate. Discuss why you would prefer one model over the other. (4 Marks)

- B. Egla dreams of owning her own home. She recently took her first loan and is actively scouting for properties around Kitengela in Kajiado County. During her recent visit, she met up with Peter who introduced himself as a land broker in that particular area.

Peter drove her around as they viewed several properties and she has identified a particular one for her purchase.

- i. Eglá has approached you for legal advice on the transaction to protect her interest. You have conducted an official search on the property and learnt that the registered owner of the property is deceased, and the property is encumbered. Explain what your advice would be to her in this circumstances? (2 Marks)
- ii. Taking into account the findings of the official search and your advice, Eglá insists on proceeding with the transaction. Explain the steps you would be required to take to ensure registration of a transfer in Eglá's favour is free of any encumbrance. (4Marks)

QUESTION SIX

In 2011 the Government of Kenya designated 100 acres of land in Kajiado as public land available for allotment to private parties. The Government Surveyor working together with the Director of Physical Planning prepared a scheme plan delineating the land into 80 one-acre parcels of land. Following due process, Andrew Simba applied and was allotted 1-acre parcel of land known as B23 following which he was issued with a conditional letter of allotment. On receipt of the conditional letter of allotment, Andrew Simba announced to his family that they were now owners of 1-acre parcel of land in Kajiado and that they would build a family home in the coming two years. He then locked up his precious letter of allotment in a safe. In May 2015, Andrew Simba visited the parcel of land and was surprised to find construction works ongoing. Furious and confused, he sought to know who the trespasser was. The project foreman informed him that as far as he was aware, the land belonged to John Mukora who was in the process of building four houses for sale. Shocked at this news, Andrew Simba pronounced loudly that he would report the matter to his lawyer and that his lawyer would deal with whoever Mukora was.

- a) You are Andrew Simba's lawyer. Explain to him whether a letter of allotment constitutes a valid title. (3 Marks)
- b) Advise Andrew Simba on the process of acquiring title from a letter of allotment. (4 Marks)
- c) On your client's instructions, you have written to John Mukora demanding that he stops the construction and vacates your client's land forthwith. On receipt of the demand letter, Mukora has appointed Blue Advocates to represent him in the matter. Blue Advocates have responded to your letter by stating that their client is the lawful owner of the parcel of land pursuant to a Certificate of Title dated 17th June 2014.
Advise Mr. Andrew Simba on which of the two documents (his Letter of Allotment versus Mukora's Certificate of Title) takes precedence. (3 Marks)

