COUNCIL OF LEGAL EDUCATION.

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES.

ATP 107: CONVEYANCING

MONDAY 21ST JUNE 2021

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) Candidates **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

Hamisi is an only child. His mother died 5 years ago and his father died last year. Hamisi has in his possession his parents' death certificates as well as a letter from his area chief confirming his parents' deaths as well as the fact that he is an only child. Hamisi calls on your chambers to consult and gives you the following information: -

i. Hamisi's father owned a commercial building in Nairobi CBD popularly known as Nguvu Kazi Plaza
ii. The property comprises shops, restaurants and offices
iii. The title is in the name of Hamisi's deceased father
iv. Title details are: -
   - L.R. 200725/200
   - I.R 2001856
   - Tenure is leasehold for 50 years from 1st January 1975
   - There is a Certificate of Title under the Registration of Titles Act [Cap 281] (Now repealed)
   - Land Rent is a peppercorn (if demanded)
   - Rates are payable to the Nairobi County Government.

Hamisi informs you that he has a cash purchaser for the property, one Juma, who is offering a very good price but the intending purchaser has threatened to withdraw from the sale upon learning that the property is in a deceased person's name and that it has only 5 years before the lease expires. Hamisi has brought Juma along and both now seek your advice on the following:

a) Hamisi argues that as an only child, he has an automatic right to the property and can sell without impediment. With reference to statutory provisions, advise Hamisi and Juma (2 marks)

b) What is the process required to transmit the property to Hamisi legally? (3 marks)

c) Does Hamisi have any legal recourse on the fact that the lease has 5 years to expiry? What legal/statutory provisions would be of assistance to him in this regard? (3 marks)

d) What procedure (if any) is provided in conveyancing law and practice to cure the expiry of the lease? (3 marks)

e) Assuming that Hamisi is able to resolve the issues of transmission of the title to his name and the expiry of the lease, advice Juma on: -

   i. The process of sale and how you will structure the sale/purchase process to protect the interests of both the vendor and purchaser in the process (4 marks)

   ii. What are the clearances and consents that will be required from the vendor in this particular case bearing in mind the title details provided above? (3 marks)

   iii. What are the respective tax obligations to be borne by each of the parties? (2 marks)

QUESTION TWO

Uchumi bank has approved a loan facility in favour of Pele Company Limited. The proposed security is a twin house comprised in a lease by Farmhouse Limited. It is let out to several tenants. The property is also charged in favour of Capital Bank. Uchumi Bank is hesitant to accept the proposed security.

a) As a newly admitted advocate, advise Uchumi Bank on the practicability of taking the proposed security, the relevant approvals required for the securitization as well as the required formalities to make the security enforceable. (4 marks)

b) Advice and explain to Uchumi Bank at least two (2) other securities that the Bank can request from the borrower's company. (2 marks)

c) Six months after disbursement, the borrower is unable to continue remitting the monthly instalments. This is after the said property was auctioned by Capital Bank for a similar default. All the proceeds were utilized to partly pay the first lender's loan, leaving a shortfall which the bank decided to write-off. Advise Uchumi Bank on the available remedy/remedies in the circumstances and why it should settle for the same. (4 marks)

QUESTION THREE

Jabali owns a ½ acre parcel of land in Utawala area, Nairobi. It fronts the Eastern by-pass where there has been exponential growth of Commercial enterprise and Jabali wants to establish a petrol service station on the property. Jabali informs you that he recently approached one of the major oil companies for a franchise but the legal officer of the oil company declined and without elaboration said that Jabali's title was not suitable in tenure or user. Jabali hands you the title documents where you establish: -

i. Title No. is Nairobi/Utawala Block 2/1700 then registered under the Registered Lands Act [Cap 300] which has now been repealed.
ii. Tenure is leasehold from the Government of Kenya for a term of 50 years from 1st July 1977 and the lease has 3 years to expiry
iii. Annual rent is Kshs. 945 (revisable)
iv. The lease from the Government of Kenya in condition 5 provides that the premises shall only be used for a single dwelling house (excluding a guest house)

Jabali now seeks your advice

a) What did the oil company's legal officer mean when she said that the tenure and user of the property was not suitable? (2 marks)

b) With reference to statutory and legal provisions, explain in detail the processes that Jabali has to undertake to cure the problems of tenure and user. (6 marks)

c) Jabali wonders why the government has to complicate land ownership by issuing leases for a limited duration and you mention that it has to do with the government wanting to retain reversionary rights.

Explain the concept of reversion with reference to leasehold tenure on government land. (2 marks)

QUESTION FOUR

Your client Janet seeks an urgent appointment in your chambers. Upon meeting you, she informs you that she has taken interest in a property offered for sale along Waiyaki Way near Kangemi where she wants to set up a Petrol Service Station and a convenience store. The same is next to a huge gated community development with over 300 households and in her assessment, the business opportunity is immense. Janet further discloses that she has negotiated a good price well below market price and that she stands to gain almost Kshs. 10 million in savings on the purchase price in addition to the investment opportunity arising. She, therefore, wants to enter into an immediate sale agreement to be signed the same day or at worst the next day and she further discloses the following information.

i. The owner of the property is a widow who unfortunately is currently in India undergoing treatment for an undisclosed ailment
ii. The sale is meant to finance the treatment cost and the sale agreement would be signed by the widow's son
iii. As a condition for the sale, the vendor requires 50% of the purchase price, as a deposit, be wired to her account directly as soon as the son signs the sale agreement
iv. Unless the money is paid within 3 days, the deal would be cancelled.

Please advise Janet on the following:

a) What due diligence measures would you undertake in respect of the proposed sale? (3 marks)

b) What legal instrument would you require from the vendor to enable the son transact on her behalf? What steps would be required to validate that instrument? (2 marks)

c) What is your advice to Janet in respect of the condition to pay 50% of the purchase price directly to the vendor upon execution of the sale agreement? Please explain your answer. (3 marks)

d) Before Janet leaves you call your clerk to instruct him on the urgent search required on the title but he reminds you that the land registry concerned has been ordered closed for 3 weeks for audit by the government and it will not be possible to obtain the search within the timelines contemplated by Janet. Your client cannot imagine losing this deal. What is your advice to Janet? (2 marks)

QUESTION FIVE

a) Compare and contrast a transfer of an interest in land to a transfer of charge. What are the tax implications in both transactions? (4 marks)

b) Patel & Jael are husband and wife. They own a property in Langata shopping centre being L.R No. 209/1010. The property is charged for a loan of Kshs. 40 million. The intended purchaser is buying the property for Kshs. 60 million through a bank loan of Kshs. 50 million.

Calculate the stamp duty payable on: - (3 marks)
i. The Discharge
ii. The Transfer
iii. The Charge. Show workings

c) Unfortunately, Patel dies before the transaction is concluded. The purchaser is still willing to complete the transaction. Advise Jael on how to proceed (3 marks)

QUESTION SIX

a) Industrial Park Limited`s advocates have forwarded you a draft lease for review on behalf of your clients, the tenants. The lease is for a commercial property. Discuss at least 3 pertinent clauses that you must ensure are in the lease document prior to execution by your client. (6 marks)

b) Describe your role had you been retained by the lessor in the transaction (4 marks)

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COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE: A T P 1 0 7 SUBJECT/UNIT CONVEYANCING

REGISTRATION NUMBER:

DATE: 21st June 2021

INSTRUCTIONS TO CANDIDATES

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner A.M		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	16	✓				
3	10	✓				
4	07	✓				
5	08	✓				
6	10	✓				
TOTAL MARKS	51					

REGISTRATION NUMBER:

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Questions 1 a & b

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(a)

Section 60 of the Land Act 2012 provides for disposition of land through transmission.

Transmission is where property or interest in land passes to the heirs of the deceased's estate.

Upon the death of a proprietor, interest in land is determined through succession proceedings. Hamisi as an only child falls in the first tier to inherit in accordance to the law of succession Act and faces no opposition in the line of priority.

(b) Process of transmission:

The ~~title~~ certificate of title is in the name of Hamisi's deceased father.

i) Hamisi has to institute succession proceedings.

ii) Upon acquisition of the grant of letters of administration intestate, he should file an application attaching the following document.

1. Letters of administration intestate grant.
2. His father's parents death certificate
3. The original certificate of title
4. His PIN & Identification card copies (certified)
5. 3 passport photographs.

Do not write in either margin

Questions 1(a) Write on both sided of the paper

The Registrar shall then cause Hamisi to be registered as the legal proprietor of the parcel.

Leaseholds are dispositions where the Lessor retains ownership but gives the lessee exclusive possession for consideration.

1(c) Leases are defined in the Land Act as a licence permitting by the lessor, the lessee exclusive use and possession.

Nguru Kazi Plaza is a leasehold which means that the Government is the Lessor and Hamisi deceased father the Lessee.

The Land Act stipulates that upon the expiry of a lease, the immediate last lessee has a pre-emptive right to have the lease renewed in his favour.

The Act provides for renewal of the lease process is to be initiated within 5 years by the National Land commission.

REGISTRATION NUMBER:

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Questions 1(d)

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1d) Renewal of leasehold prior to expiry of the Lease

The Land Act (2012) provides the process of renewal of lease to be as follows:

i) The National Land Commission should within 5 years prior to the date of expiry of a lease where the Lessor is the government send a notice to the lessee.

The notice should detail the date on which the lease shall expire as well as the lessee's pre-emptive right to have the lease renewed in his favour.

ii) If the lessee does not respond to the notice after one year from the date of service, the National Land Commission should place the notice in a daily of nationwide circulation. with detail on the pre-emptive right and date of expiry.

If the lessee fails to respond, the commission should conduct a physical survey on the parcel in question and if it contacts the lessee, pass the information required in the notice.

Do not write in either margin | Questions 1(d) 3(e) | Write on both sided of the paper

iii) If the lessee elects to renew the lease, the lessee shall apply for renewal attaching the following documents:

i) Identity card / passport copies
ii) Any encumbrances that will exist in the renewed lease
iii) Land Rates clearance certificate. (2)
iv) Land Rent Clearance certificate (1)

iv) If the Commission approves the renewal, the land is to be resurveyed and valued for purposes of

v) The old certificate of lease is surrendered and a new one issued.

Should the commission reject to renew the lease, appeals shall lie with the Appeals Commission Committee

3(e) (i) Process of sale/purchase:

Preliminaries:

* This will be through acquisition of an official search through form LRA 64 to reassure the purchaser that Hamisi holds a valid certificate of title.
* It will also include inquiries on the purchaser's and vendor's particulars such as their names and descriptions.

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Questions 1(e)

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* I shall also advise the purchaser and vendor of their tax obligations current and in the future. (1)

Sale agreement/contractual stage.

* I shall draft the sale agreement which shall detail the amount of deposit to be paid prior to the execution of the agreement, the completion date, the remedies available to each party upon breach of contract by the other party and the responsibilities of each party. (1)

Transfer Stage:

* Upon execution of the sale agreement, I shall prepare the transfer document in triplicate for execution by the vendor and the purchaser. (4)

* I shall also facilitate the acquisition of the Land Rate clearance certificate, Land Rent clearance certificate, payment of stamp duty, payment of outstanding utility bills and other consent that may apply.

Completion Stage.

* I shall ensure that the original certificate of title and the other completion documents are in order for-

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Questions 1(e)

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the vendor.

I shall ensure that the purchase price is paid off before embarking on the registration of the transfer.

ii) Clearances and consents:

a) The Land Rent clearance certificate as the property is a leasehold. (1)
b) The Land Rates clearance certificate as the property is a leasehold. (2)
c) Spousal consent (1)
d) Consent from the Deputy Commissioner of Lands

iii) Tax Obligation:

Hamisi (Vendor)

* The vendor has an obligation to pay the capital gains Tax unless exempted. (1)
* If the property was acquired after 2015, Hamisi shall be liable to pay.

Purchaser

* The purchaser shall be liable to pay 4% of the value of the property as stamp duty. (1) (2)

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Questions 3 (a)

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3a) uncertainability of tenure & uses:

Tenure:

The title Jabali has is a leasehold. Upon the expiry of the term, the government holds a reversionary right to the property.

Similarly, the lessee i.e Jabali holds a pre-emptive right to renewal but the same is not absolute. It would therefore be risky for a substantial development to be undertaken on the land without confirmation of renewal of the lease.

Uses:

The physical Planning Act provides that a parcel of land shall be limited to the usage permitted.

The lease provides that the premises shall only be used for a single dwelling house and therefore a commercialization project or commercial structure cannot be undertaken on the land as it is without changing the uses.

Do not write in either margin | Questions 3.(b) | Write on both sided of the paper

3b) Change of user:

i) Jabali should engage a Registered physical planner who shall fill and duly sign form PPA (1)

ii) Jabali shall thereafter advertise on two local dailies of nationwide circulation the intention to change user on title no. Nairobi/Ketawala Block 2/700.

iii) The registered physical planner shall then prepare a brief detailing how the change of user would not have negative effects on the land and on the adjacent parcels.

iv) Jabali shall pay the requisite fee and attach the receipt to the brief.

v) The application shall be submitted to the Nairobi County Government

vi) The county government shall invite public opinion and thereafter review the application.

vii) The county government shall tender its approval/refusal through PPA 2.

viii) The application shall be lodged with

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Questions 3 (b)

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the National Land Commission.

x) The National land commission (NLC) shall circulate the application to the director of survey and director of physical planning.

xi) The valid certificate of lease shall be surrendered for the change of user to be effected on the title.

Change of tenure:

i) Jabali shall apply directly or through a representative for renewal of the lease.
He shall attach:
a) a copy of his national identity card
b) certificate of lease
c) Any encumbrances that will exist on the renewed lease
d) Proof of compliance with the terms of the lease
e) Land Rates clearance Certificate
f) Land Rent clearance Certificate

(1)

ii) The National Land Commission shall send a copy of the application to the representative of the cabinet secretary (1)

Do not write in either margin | Questions 3 (b) & (c) | Write on both sided of the paper

iii) The national government committee shall review the application calling upon the government surveyor, government planner and other concerned government officials to express their opinion on the approval or refusal of renewal. (1)

iv) Upon approval, land shall be reserved, geo-referenced and valued for revision of the land rent. (6)

v) Tabati shall then surrender the certificate of lease and be issued with a fresh new one with a different amount of annual rent and reference number.

3(c) Reversion with reference to leasehold tenure.

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Back in England in the pre-colonial era, all rights in land were vested on the crown i.e the monarchy.

All lands were therefore taken to be owned by the queen and were merely lent to the ordinary folk until if and when the government

REGISTRATION NUMBER:

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Questions 3 (c)

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With colonialism, the Europeans (British) were interested in retaining the White highlands for themselves in perpetuity.

They therefore adopted a leasehold system to ensure that their rights would be protected. (1) (2)

The decolonization process was not abrupt and therefore the different tenures that had been applied in different parts of the country slowly culminated into the official land tenures after colonialism.

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4(a) Due diligence:

i) Conduct an official search. (1)

* There are 3 types of searches:
  1. postal, physical & official.
  2. physical
  3. official

* An official search is done by filling and form LRA 84 and attaching a copy of the Janet's identity card and PIN certificate.

* The Registrar then checks the register and ascertains to whom the title belongs to in the register as well as the encumbrances listed.

* An official search having being given by the Registrar acts as proof that the person listed has an indefeasible title to the property.

* It is often used in court to determine if one is a bonafide purchaser for value without notice. (1)

ii) Conduct a physical search. NIT:

* The vendor has an responsibility obligation

REGISTRATION NUMBER:

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to reveal the defects in the property. To ensure that the information given by the vendor is correct, a physical visit is necessary to determine if the parcel is vacant and who has possession.

iii) Ensure that the Power of attorney is registered for the widow's son to have capacity to execute the sale agreement for the vendor.

iv) Conduct inquiries as to the nature of ailment that the vendor is suffering from to verify if the widow has mental capacity to contract.

v) Engage a surveyor to verify if the size of the parcel corresponds to the size claimed by the vendor and that all beacons and boundary marks are in order.

4b) Power of Attorney.

Where a party is unable to personally undertake obligations that they are obliged to, such a person (donor) can through a power of attorney delegate the responsibility to their person of choice (donee).

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Questions 4(b)

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The power of attorney maybe either:
i) General
ii) Specific

A general power of attorney gives the donee power to transact as the donor would in a business.

A Specific power of attorney limits the donee to a specific task or task.

Any action done outside the scope of the powers given by the donor renders the transaction null and void.

2

Preparation of a power of attorney and executed.

i) Duly filled form 5 or 6 of the LRA.

ii) Assessment and payment of Stamp duty.

1

iii) Submission for registration at the land office along with the PIN certificate certified copy of national identity card and the stamp duty form payment slip and receipt.

REGISTRATION NUMBER:]

Write on both sided of the paper Questions 4(c) Do not write in either margin

4 c) Payment of 50% of purchase price as deposit
Deposit of the purchase price can either be paid to the vendor directly or to the vendor's advocate to hold in trust.

Depositing 50% of the purchase price to the vendor directly maybe disadvantageous to Janet in case the sale does not go through.

Situations whereby Janet may suffer loss or difficulty in regaining the purchase price are:

i) If the vendor revends the agreement after payment of the 50% purchase price and does not return it immediately.

ii) If the Janet wishes to rescind the agreement after payment

One of the remedies upon breach of contract is that the vendor can retain the deposit. Should Janet be unable to complete the purchase price Should Janet be ~~unable~~.

If the breach occurs on the vendor's part, Janet would stand more to lose in comparison to other transactions where the deposit is 30% as per the

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Law society of Kenya conditions for sale. The higher the deposit, the higher the risk.

4d) Advice to Janet:

An official search protects the purchaser as it verifies that to the best of the purchaser's knowledge, the person listed as the proprietor is the one holding an indefeasible title over the land.

The law recognizes and is protective of a bonafide purchaser for value without notice.

The best way to prove that one is a bonafide purchaser for value without notice is through an official search.

Proceeding with a sale of land without an official search renders the purchaser vulnerable as in case of fraud, there is no protection awarded by the law.

Janet may also advise the vendor to secure a charge that she would take over at the point of the eventual transfer.

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REGISTRATION NUMBER: [ ]

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Questions 5 a)

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5a)

Transfer:	Charge:
i) There is change in legal ownership. (1)	i) The chargor retains legal ownership while the 2nd chargee acquires an equitable right on the land similar to the one the first chargee held. (1)
ii) As per section 2 of the Land Act includes a lease a transfer transmission	ii) Exists only in the same nature.
iii) Consent of the previous holder of the title is not necessary. only the current and prospective buyer need agree. (1)	iii) Consent of the first chargee is necessary.
iv) Tax obligations apply with the vendor paying capital gains tax and the buyer the stamp duty. Stamp duty is assessed as: Transfer in municipality = 4%. Transfer in other areas = 2%. Dealing.	iv) There are no tax obligations. provided the same were cleared in registration of the first charge initially. (1)

(4)

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Questions 5 b) a (i)

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i) Discharge

0.05% of redeemed amount (1)

$\frac{0.05}{100} \times 40,000,000 = 2000$ Ksh

ii) Transfer.

4% of purchase price (1)

$\frac{4}{100} \times 60\ 000\ 000 = 2400000$ Ksh

iii) The Charge

0.1% of loan amount. (1)

$\frac{0.1}{100} \times 50,000,000 = 50,000$ Ksh (3)

5(c)

Property owned by spouses is said to be owned in joint tenancy. (1)

Interest therefore passes to the remaining proprietor upon death of one of the proprietors.

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REGISTRATION NUMBER:

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Questions 5(c)

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The purchaser's advocate shall issue an undertaking to Jack's advocate promising that upon acquisition of the completion documents, the purchaser's advocates shall register the transfer and a charge in favour of the purchaser's bank (the bank offering the security facility to the purchaser) and pay off the remainder of the purchase price owed to the vendor i.e 20,000,000 KSh.

The purchaser's advocate shall also issue another undertaking to the vendor's bank (where the vendor charged the property) requesting for the original title and completion documents to ensure discharge of the charge in their favour and to the purchaser's bank.

The undertaking will also carry a promise to clear off the 40,000, or ban upon registration of the charge in the purchaser's favour.

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Questions 6 (a)

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(6a) Leases. (Clauses)

a) Description of parties, and the property. (2)

It is crucial that the main objects to the lease are defined. Without a proper definition of the Lessee, lessor and the property, ambiguity could render prejudice the rights of the parties.

It should be clear as to which land is being leased and by whom and who is the current owner.

b) Express and implied covenants. (2)

It is essential to list and explain the duties that are to be borne by either party and to what they will be entitled to.

This includes provisions such as maintenance of the premises, payment of statutory obligations and and restrictions as to the use of the premises.

REGISTRATION NUMBER:

Questions 6(a)

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c) Payment clause

A payment clause will define the amount payable and the frequency of the payment.

It shall also detail when the amount becomes due creating clarity for both the lessor and the tenant when their obligations arise and as with one party's obligation lies another's rights.

d) Interpretation clause

It contains the definition and interpretation of terms and clauses in the lease

This is to provide clarity and reduce ambiguity or vagueness

e) Termination clause

The termination clause provides on the requirements for notice of termination and ways in which the parties can terminate the lease

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Questions (6b)

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6b) Role of the lessor's advocate:

i) To draft the tenancy agreement. The lessor as the proprietor of the premises stands to suffer more harm, as such, my role is to ensure that the tenancy agreement adequately protects the lessor while preserving the tenant's rights.

ii) Ensure that the tenancy agreements are executed and witnessed.

iii) ~~Ensure that~~ ~~tena~~ Negotiate amendments suggested by the tenants to the best of the lessor's interests.

iv) Sanitize tenants documentations such as the company registration documents.

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COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

UNIT CODE: A T P 1 0 9 SUBJECT/UNIT ...CONVEYANCING.....

REGISTRATION NUMBER:

DATE:..21..June..2021.....

INSTRUCTIONS TO CANDIDATES

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6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	3	AWM				
2	1	AWM				
3	2	AWM				
4	0	AWM				
6	1	AWM				
TOTAL MARKS	7					

CLE/EXAMS

REGISTRATION NUMBER:

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Questions 1

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a) In conveyancing, death terminates the existence of a leave. In accordance with the Land Registration Act, Hamwi should approach the Registrar of lands and seek that the title of the land be changed to his name. With regard to Juma, I would advise him that in accordance with the Land Titles Act, his desire to accept the land is valid. With regard to Hamwi's argument that he is an only child, a court order vesting the rights of the land to his name would be important.

b) Transmission - This is the transfer of an interest in land by an operation of law. Therefore, Hamwi would be required to go to court and acquire a court order that gives him vesting order. A vesting order permits one to own land through court order.

c) Hamwi does not have any legal recourse on the fact that the lease has five years to expiry. This is because expiry of a leave causes or is a ground for the termination of a leave. Therefore, Hamwi under the Land Titles Act due to the fact that the leave expires after five years would be forced to renew the leave for a longer period when renewing it under his name.

d) Due to the fact that expiry is a ground for the termination of a leave, registration of a new leave is of utmost importance. It would be important to consider also whether the leave was a fixed period leave. Due to the expiration of the periodic leave, Hamwi would be required to approach the lessor and bar the expiry of the leave by way of consideration where he would be acquiring a new leave under leasehold tenure.

Do not write in either margin | Questions .....1..... | Write on both sides of the paper

e) i) Firstly, with regard to Caveat Emptor which means "buyer beware" and that the seller is under no duty to disclose property defects and that the buyer is under an obligation to inspect the property. Therefore I would structure the purchase process by:

1) Advising Juma to conduct a research on the desired property to ensure that it lacks defects through a client interview (Pre-Contract stage)
2) I would then through the contract stage, ensure that an offer for purchase is placed and an acceptance is also placed.
3) Then I would ensure that the monetary consideration is also paid. With regard to money I would advise Juma to ensure that he also clears all his rates at the Registrar of Titles.
4) After clearance of all the rates required, I would then Register the land under a different title, it being under Juma's name.

(ii) a) Rent Clearances from the shops, restaurants and officer.
b) Rate Clearances
c) Consent from the Registrar of Land Titles.

(iii) With regard to tax obligations:
(i) Hamisi is bound to pay tax for selling the property.
(ii) Juma is bound to pay tax for buying the property.

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REGISTRATION NUMBER:

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Questions 2

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(a) With regard to the practicability of taking the proposed security a charge would be considered. A charge is when as security for a loan provided to acquire property, the buyer or the person who is taking the loan provides the lendor with a title as security for the money he is requesting. The relevant approvals required for the securitization are from Uchumi Bank and Farmhouse limited. The formalities to make the security enforceable are:

i) It should be in writing.

2) Certainty should be addressed in that the desired property and all the details including it as well as the owner should be stipulated.

3) Attestation - The document should be signed and witnessed.

(1)

(b) License - This is granted to a purchaser for the purpose of gaining access to a land property that would prior to the acquiring of the license be considered as trespassing.

Mortgage - This is whereby for the loan acquired from a bank regarding conveyance matters, until the repayment of the debt the borrower stays indebted to the bank through the property which they are using the money for.

c) i) Relief - Uchumi bank has a remedy for relief due to the fact that Pele company limited was unable to continue remitting the monthly instalments.

(ii) Damages - Uchumi bank has a remedy of damages due to the loss that it incurred when it write-off the debt that the borrower owed them.

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REGISTRATION NUMBER:

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Questions .....3.....

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(a) Jabali was seeking to establish a petrol station which was contrary to the terms of the title documents which stipulated that "iv. The lease from the Government of Kenya in condition 5 provides that the premises shall only be used for a single dwelling house (excluding a guest house)". The tenure was leasehold which allows for exclusive possession of property. Jabali was meant to have freehold tenure which allows for absolute possession of land property and hence Jabali as an owner would have been permitted to do anything with his parcel of land.

(b) 1.) Renewal of his tenure - Jabali's tenure was for a term of 50 years and the lease had 3 years to expiry. With reference to the Land Act, expiry of a lease is sufficient cause for the termination of a lease.

2) Jabali should seek to replace his leasehold tenure with freehold tenure which would in turn give him absolute possession over his land and would therefore be able to establish a petrol service station in accordance with the Land Titles Act.

3) With reference to the existing title of the land, Jabali would be required to complete his payment of rates and annual rent before he would request for a conversion of the tenure to freehold from leasehold.

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Questions .....3.....

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c) A leave provides an owner of land with the temporary possession for a fixed period of time after which the leave expires. With reference to leasehold tenure-this is the tenure whereby an owner is entitled to exclusive possession of land for a period of time. The concept of reversion provides for this tenure on government land. The concept of reversion simply provides that upon the expiry or termination of a leasehold tenure, the owner is supposed to surrender the land back to the government due to the fact that the time that was provided for ownership by the tenure has already expired.

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Questions 4

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a) In respect of the proposed sale, I would:

(i) Conduct a search at the property for sale along Waiyaki Way near Kangemi where she wants to set up a Petrol Service Station and a convenience store.

(ii) It would also be of importance to ensure that all the rates payable are cleared specifically at the Registrar of Titles

(iii) I would ensure that the mentioned 50% deposit of the purchase price be wired to the vendor as soon as the agreement is signed.

(b) I would require the vendor to

(c) My advice to Janet would be that the condition to pay 50% of the purchase price directly to the vendor is mandatory. My explanation would be that the payment of the deposit is an important step in the conveyancing process and that it was a term to the contract under which Janet as a party to would had accepted upon execution of the sale agreement.

(d) My advice to Janet would be that she could apply to the vendor for easement. Easement is considered as permission to access somebody else's property for a said purpose. Due to the fact that the vendor was also in a needy situation then chances of her accepting would be very high. Additionally, Janet could also patiently wait for the land registry to reopen as security for the deposit for she cannot pay without searching.

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REGISTRATION NUMBER:

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Questions 6

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a) Clause on certainty - Prior to the execution by my client it would be of great importance to ensure that certainty is upheld in the lease document. Certainty refers to detailed information about the commercial property and the names and details of the owner.

(ii) Clause on attestation - The lease document for it to be a valid lease document has to be attested to and signed by the involved parties. Verification of the existence of a conveyance relationship is very crucial.

(iii) The lease document must be in writing. This is due to the fact that through writing, a legal document is created.

~~(b) i) Role of conducting searches and ensuring the mentioned property had no defects.~~
~~(ii) Role of~~

b) Had I been retained by the lessee in the transaction, my role would've been:

1) Accompanying the lessee to conduct searches,
2) Drafting an appropriate lease for the tenants,
3) Ensuring that the deposit is paid to the lessee.
4) Drafting a contract for the transaction where the parties would stipulate their terms.

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