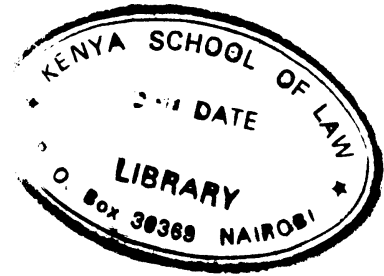


COUNCIL OF LEGAL EDUCATION



PRE-BAR EXAMINATION

LAND LAW

TUESDAY 20TH SEPTEMBER, 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer Question **ONE** and **any other three** Questions
- (b) ALL Questions carry **25 marks each**
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. "In our view.....the case made out here is one of customary law trust. The defendant, as the eldest son of the deceased was registered proprietor of the suit land as a trustee... the husband of the 1st plaintiff acquired the land in dispute by purchase and as the defendant was his eldest son when the process of registration took place he (defendant) was registered as proprietor. It is not a custom or procedure without precedent. The defendant failed to show how else this land could have been acquired. His feeble attempt to claim the land as his own was not supported by evidence... It was argued on behalf of the appellant that there was no sufficient evidence to prove customary law trust. On our own re-evaluation of the evidence, we are satisfied that there was ample evidence of the history of the suit land and of the relevant customary law on which the learned judge could find as he did".

Per E.O. O'Kubasu, Waki P.N. Deverell W.S. J.J.A in Njenga Chogera (The Administrator ad Colligenda bona of the Estate of the late Chogera Kimani vs. Maria Wanjira Kimani and 2 others Civil Appeal No.322 of 2003.

With the help of case law, discuss this statement in the context of sections 27(a), 28 and 30 of the Registered Land Act (Cap.300 Laws of Kenya) and Article 40(1) and (2) of the Constitution of Kenya.

(25 marks)

2. The following information was captured in a document that was described as a lease between Mr. Ndunda Ndunda and Mr. Okuta Okuta.

"This lease made today between Mr. Ndunda Ndunda (landlord) of P.O. Box 2020-00100 Nairobi and Mr. Okuta Okuta (tenant) of P.O. Box 3030-00100 Nairobi WITNESSETH AS FOLLOWS:-

- (a) Premises let. IS ALL THAT house known as Apartment 6 at Kindaruma Court in the Republic of Kenya; both on ground floor and 3rd floor;
- (b) The landlord may enter the demised premises from time to time as he may desire and the tenant SHALL NOT obstruct him;
- (c) The lease will be executed by and on behalf of the landlord by his favourite last born son aged 16½ years;
- (d) This lease shall be valid for as long as the Republic of Kenya does NOT achieve the Millenium Development Goals (MDGs).

Signed (by the Landlord's last born son) xxx

Signed by the tenant xxx

Discuss the essential validity of this lease.

(25 marks)

3. Discuss and differentiate between the following terminologies as used in land law:

(a) 'Privity of Contract' and 'Privity of Estate';

(b) Foreclosure (in mortgages and charges) and forfeiture (in the context of leases)

(25 marks)

4. "It confers and since the beginning of legal history it always has conferred the lawful right to exercise over upon and in respect of land, every act of ownership which can enter into the imagination including the right to commit unlimited waste"

Challis Law of Real Property 3rd Edition at page 218

Discuss this statement in the context of the content and scope of the fee simple estate.

(25 marks)

5. Between 1895 and 1963 the colonial authorities in Kenya adopted and implemented several land policies. Discuss these policies and cite the relevant statutory instruments used to effectuate these policies.

(25 marks)

6. The Ministry of Roads of the Republic of Kenya desires to build a superhighway that will cut across Umoja Estate in Nairobi. There are several properties earmarked for compulsory acquisition and eventual demolition. One of the potential victims of the intended compulsory acquisition is Mr. Bwana Dawa, a real estate tycoon who recently completed the construction of a multiple storey building in Umoja Estate. Worried by the prospects of the demolition, Mr. Dawa calls on you, in your Chambers, for advise on the procedure that the Government of Kenya must follow in lawfully and compulsorily acquiring his property.

Prepare a legal opinion, backed with sufficient case law as well as statutory provisions.

(25 marks)