

COUNCIL OF LEGAL EDUCATION.



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

ATP 107: CONVEYANCING

WEDNESDAY 18TH JULY, 2018.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Six (6) printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE** 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

- (i) Your client Jane is recently widowed. Her husband left a will in which he bequeathed her one of his prime properties in Kiambu town.
- (ii) Jane instructed an advocate who obtained probate of the will and she has in her possession a Grant of Probate with the will annexed and a Confirmation of Grant showing that the property is to vest in her name.
- (iii) On the property, stands a commercial building and Pesa Bank Limited has approached her to lease out the entire ground and 1st floor. Jane is excited because if this materializes it earns her a good income being recently retired.
- (iv) A copy of the title reveals that:
- The property was originally registered as L.R. 70007/2030 under the Registration of Titles Act.
 - The tenure is leasehold for 99 years from 1/1/1979
 - Land rent is Kshs.2000 (revisable)
 - Size of property is 0.0750 Ha
- (v) Jane's advocate who handled the succession procedures has come clean and admitted she does not handle conveyancing matters hence her coming to you.
- (vi) When examining a copy of the document of title, Jane discovered that her late husband had charged the property to Nairobi Commercial Bank. She has visited the Bank which has confirmed that her deceased husband had cleared his loan but did not process the necessary documentation to allow the return of the title documents which are still held at the bank.

Jane now seeks your advice on the following:

- (a) The process necessary in clearing with Nairobi Commercial Bank and getting back the title documents.
- Discuss what the process means in law, the documents involved and the respective roles of the parties or their advocates. **(4 marks)**
- (b) Jane's second born son has been issuing subtle threats claiming that the late father should have bequeathed the property to him since he had acted as caretaker for 5 years during his father's illness. Jane is anxious and asks whether beyond the succession procedures undertaken, there is a further process of getting the titles to bear her name. If there is please advise her on:
- (i) The process. **(2 marks)**
 - (ii) Clearances and consent needed. **(3 marks)**
 - (iii) The document(s) to be prepared by the advocate and their implications in law. **(3 marks)**
- (c) On the renting out of the premises to Pesa Bank Limited, Jane and the bank have agreed on a 6 year term. Explain the following:

- (i) The documentation required and its meaning in law. (2 marks)
(ii) The principal parts of the document and the principal terms to be included in the same. (3 marks)

- (d) Jane is concerned about the time it will take to carry out the three processes of reversing the charge registered in favour of Nairobi Commercial Bank, getting the title into her name and finally renting out the property to Pesa Bank Limited.

In terms of procedure, what will you legally do to quicken the process and how will you achieve it? (3 marks)

QUESTION TWO

Mr. Charles White is the registered owner of 200 acres of agricultural land in Crimson County. He acquired this land 20 years ago and in this period he has been farming cotton on his land for sale to a local ginnery. The ginnery has recently closed which means that Mr. White can no longer sell his cotton produce. He has therefore decided to convert his 200-acre piece of land from agricultural use to a residential estate known as Crimson Superior Homes. Mr. White would like your legal advice on how to implement and create Crimson Superior Homes Estate and thereafter sell the homes to home owners.

- (a) What would you advise Mr. White to do in order to be permitted to develop residential units on his 200-acre parcel of land and what steps should he take in order to obtain the said permission? (5 marks)
(b) Describe two possible options available to Mr. White in structuring the sale of the units to home owners/buyers. (5 marks)

QUESTION THREE

- (i) Your client Baraka Kamau is the registered owner of a 10 acre farm in his home village of Mucha, Kimbo County. He inherited the parcel from his father and lives on the property with his family.
(ii) Baraka grows coffee on 5 of the 10 acres and uses another 1 acre in raising dairy cows under zero grazing practice. He wants to expand his farming enterprise and do commercial horticulture under greenhouses on the remaining 4 acres.
(iii) To finance the new venture Baraka has approached his bank which have agreed to lend him the necessary capital of Kshs.3 million. However the bank has asked for a security for the loan and Baraka is willing to give the title documents for his home property above as security for the loan.
(iv) The property details are:
- Title No. Kimbo/Mucha/20018
 - Tenure is absolute proprietorship

- Area is 10 acres
 - Registered owner Baraka Kamau
- (v) The bank manager mentioned to Baraka that the loan proceeds will not be disbursed until the security was perfected. Baraka has no clue what this means but was shy to ask for clarification from the manager.
- (a) Explain to Baraka what it means in law to have the security perfected. **(2 marks)**
- (b) What are the documents to be drawn and what are the respective roles of the advocates since the Bank Manager told him that the bank would also be appointing its own advocates? **(5 marks)**
- (c) While standing to leave and looking quite embarrassed, Baraka mentions that his wife is opposed to his plans and has threatened to return to her mother's home if he proceeds to charge the family home especially because Baraka's late father had verbally forbidden it.

Baraka is however determined to go ahead anyway and seeks your confirmation that legally there is no bar to the process since he is solely registered as owner.

Advise Baraka.

(3 marks)

QUESTION FOUR

In 1986, Mr. & Mrs. Juma identified a 20-acre parcel of land in Safari County which they wished to purchase for purposes of building a family home and carrying on dairy farming. At the time of the purchase, the Juma's decided that they would purchase the land as joint tenants and they would hold the land in trust for their three children, Simon, Susan and Sophie. The title was therefore registered in the name of Mr. & Mrs. Juma as trustees for their children (Simon, Susan and Sophie). At the time of the purchase Simon was 6 years old, Susan was 4 years old and Sophie was 1-year-old.

At a family meeting held on 25th December 2017, Mr. & Mrs. Juma together with their 3 children decided that it was time to sell the land as the parents were old and needed to relocate to the City Centre for medical care and further that the children had all moved out of home and lived in different cities.

You have been the family lawyer for a decade now and Sophie comes to your office to represent the family in the sale of the land. She informs you that she and her siblings would prefer to execute the relevant documents as they are the beneficial owners of the land.

- (a) Who has the power to execute the Agreement for Sale and the Transfer in the above circumstances? **(2 marks)**
- (b) The completion period of the sale transaction is provided as 90 days from the date of execution of the Agreement for sale. 60 days into the transaction, Mr. Juma falls ill and passes on.

Explain how this transaction will be completed.

(4 marks)

- (c) The sale price of this land is Kshs.25,000,000/-. The price at which Mr. & Mrs. Juma bought the land is Kshs.1,000,000/-. Recently Sophie received a notice from the Revenue Authority providing that gain realized on sale of land is taxable and she asks you to explain to her how this tax is calculated. She also asks you to explain to her whether this sale would be eligible for exemption from payment of such tax.

Explain how Capital Gains Tax is calculated and the circumstances pursuant to which payment of Capital Gains Tax is exempted. **(4 marks)**

QUESTION FIVE

- (i) Your client Nathan is the registered owner of Title No. Kitale/Cheragay/51078.
- (ii) He holds the title as an absolute proprietor.
- (iii) The property is 50 acres and has been a maize farm for many years.
- (iv) Four months ago, Nathan entered into a sale agreement for the sale of the property to Vincent Wafula.
- (v) The sale agreement had the following salient features:
- Purchase price - Kshs.25 million
 - Deposit paid - 10% of purchase price (i.e. Kshs.2.5 million - receipt Acknowledged)
 - Completion period - 90 days from the date of agreement
 - Balance of purchase price - Payable to the vendor's advocate in exchange with the completion documents.
 - Completion notice - 21 days by either party upon default
 - Termination on breach - Forfeiture of 10% of the purchase price or payment thereof by defaulting party as liquidated damages.
- (vi) It is now over 120 days since the date of agreement. Nathan visits your chambers and upon discussion you advise him that the recourse is to issue a completion notice to the vendor.

Draft a completion notice to the purchaser and the completion documents that you have obtained towards completing the transaction. **(10 marks)**

QUESTION SIX

James Price is the registered owner of an office block known as Tech Towers in Silicon Valley. Following negotiations for the sale of Tech Towers, he has agreed to sell the building to Aston Martin at a price of Kshs.50,000,000/-. Mr. Martin has informed Mr. Price that he will be financed by Diamond Bank. Mr. Price and Mr. Martin have agreed to proceed with the sale and purchase. Each party has appointed an advocate to represent them respectively. Diamond Bank has also appointed an advocate to represent it in the financing aspect of this transaction.

You act for Diamond Bank.

- (a) Set out the roles of the Vendor's (Mr. Price) advocate, the Purchaser's (Mr. Martin) advocate and your role as the Bank's advocate. **(6 marks)**
- (b) At what stage is the financed portion of the purchase price paid? **(1 mark)**
- (c) Draft a suitable professional undertaking that would be exchanged between you as the Bank's advocate and the Vendor's Advocates. **(3 marks)**

END