

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 107: CONVEYANCING

WEDNESDAY 23RD NOVEMBER 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer question ONE and any other THREE questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Linda, an old college mate of yours who dropped out of law school after the first year, is selling her property to Soja Boii. Linda has copy pasted a sale agreement precedent as she does not intend to pay any legal fees. She asks you to meet her at the local cyber-café where she will seek your advice on the Sale Agreement over a cup of coffee once she prints it. She points out the following clauses (outlined below in italics) and seeks to know from you what each is intended to mean given the bold sub-headings and whether they have been properly drafted. She also seeks to know if you could redraft for her any of the clauses assuming you form the opinion that they have not been properly drafted. She does let you know that the agreed purchase price is Kshs.9.5 Million and that the property is still under construction by her private contractor Purvi. She also shows you a scanned copy of the Title document which is an old tattered looking Indenture of Conveyance dated 5.8.1941. The property is situate in rural Kiambu where Mr. Boii was born.

The clauses in question read:-

Clause 3 **Purchase Price and Deposit**

Amount of KShs.9,500,000/= or such other amount as shall be determined by the Vendor depending on the variation and the market forces in the construction industry. A deposit of 50% is payable upon the execution of the Sale Agreement to the Vendor's agent.

Clause 5 **Completion & Completion Documents**

Completion shall take place after the registration of the Transfer in favour of the Purchaser.

Clause 8 **Stamp Duty & Other Disbursements**

The Purchaser shall pay Stamp Duty of KShs.190,000/= being 2% of the purchase price to the Vendor who shall cause the Transfer to be registered within 15 days.

Clause 12 **Vacant Possession**

Possession is to be delivered on completion of the construction.

Clause 13 **Moveables**

The sale price excludes fixtures and fittings not listed in the schedule hereto.

Taking cue from the headings to the clauses, advise Linda on each of the five clauses. You may redraw the clauses but an assumption is to be made that the Law Society Conditions of Sale (1989 ed) are not part of the Agreement. **[15 Marks]**

2. You have recently been recruited as an Associate in the City Law Firm of Lil, Wayne & Company Advocates. Walter and Orpah, a couple wants to purchase a property which they have identified through Ted, an estate agent. They will have to obtain financing for part of the purchase price from Davo Bank. However the bank also wants another security in the form of a Charge over Walter's aging and ailing father's 10 acre farm. They are sure to raise 50% of the purchase price and have paid 5%. The Vendors are Qwinton and Elizabeth both whose father is a well established client of your firm. Qwinton would like your firm to act for them as well in order to speed things and synchronize the transaction with yet another transaction involving an Apartment he is purchasing. Walter had scheduled an appointment with your Senior Partner but

the latter has "called in sick" and has now asked you to step in his stead and proceed with the brief as Elizabeth must leave the country in three days' time and will be away for the next nine months. She will want Qwinton to sign all documents concerning the transaction on her behalf. All parties, except the bank's representatives, will attend the 4.00 O'clock rendezvous. Ted has called you on behalf of Walter/Orpah to confirm the meeting and has indicated that his interest must be secured in any Sale Agreement to be executed by the Vendors and the Purchasers.

- (a) Outline the information you will require from the attendees at the initial client-meeting and the advice you will give them. **[13 Marks]**
- (b) State the factors which will determine the form of Assurance(Transfer) document that you will draft in favour of Walter and Orpah. **[2 Marks]**

3. You are acting for newlyweds Japheth and his spouse Gaga in the purchase of their first residential property Bright House in the small town of Kiambu, Kiambu Municipality for KShs.10,000,000/=. Gaga has sent you an email confirming your appointment with with them and has indicated, inter alia, that they are buying the house with the aid of a loan facility from a well known mortgage institution being Home Finance ("HFCK"). The security deed is in the form of HFCK's standard form and incorporates the usual comprehensive general conditions found in Mortgage Deeds. Your firm is on HFCK's panel of Advocates and accordingly HFCK has instructed your firm to complete and perfect the security in accordance with the usual conveyancing practice and procedure.

- (a) What steps will you take to achieve this dual role as advocate for the buyers and advocate for the Mortgagor of Bright House? **[10 Marks]**
- (b) Gaga asked you in her email to briefly detail her on what "independent legal advice" means in conveyancing transactions, as HFCK has indicated that she must get the same. Please detail her. **[5 Marks]**

4. Ndindi, Nina & Anika are students at the Kenya School of Law ("KSL"). They have recently each been, separately and independently, given rooms in what they now call "The Student House", thanks to Ndindi who identified the property. They occupy their rooms individually but share the kitchen/living room/bathroom. They have each agreed with the owner, Kenvine, that they will be in residence for one year except for Anika who renegotiated to stay until she has sat or resat and passed all her professional courses/exams at KSL which is only a couple of kilometers away. Nina and Anika pay monthly rents of KShs.5, 000/= and Kshs.4, 500/= respectively. Ndindi pays nothing as she is a close relative of Kenvine's parents. Kenvine who also has access to the Student House has drafted a document intituled "Licence" to be executed by each of the three students, who crave protection and comfort as lessees as well as assurance and security as to their period of stay. Each wants to know her respective status. They all also want to know the difference between a "licence" and a "lease".

- (a) Advise each independently, outlining what your duties and role as their (and not Kenvine's) advocate would entail. **[9 Marks]**
- (b) Distinguish between a "Lease" and a "Licence" noting to state two essential ingredients of a Lease and at least two covenants which must be in any lease document to assure any Lessee of comfort and quietude. **[6 Marks]**

5. You client, Landhies Road Property Limited has partnered with anonymous philanthropist who had donated USD 100,000,000/= to finance the building of 1500 low priced housing units on a property owned by the company. The property is registered as LR 26/185 and is situate next to Muthurwa Market in Nairobi. It is the intention of the philanthropist and your client that housing units be sold to deserving civil servants only, particularly those in the lower cadre jobs. Each unit is 3 bed roomed and priced at Kshs. 3,500,000/=. Saving & Loan (K) Limited is agreeable to providing mortgage financing to any qualified civil servant including those aged 55 years provided capacity to pay the monthly installment consisting principal sums plus interest is proved. Purchasers who cannot obtain loans will be allowed to purchase on a Tenant purchase arrangement. The land is registered pursuant to the provisions of Cap 280 in Volume 293; File 17; Folio ^{1932/17} and was originally granted by the Governor of Kenya in 1953 for a term of 991 years. It is the intention of your client that the Sectional Properties Act 1987 will be applied as all the financing to complete the project is available. Moreover it is desirable that cash or financed purchasers acquire individual titles for the units duly registered under the provisions of the Sectional Properties Act 1987. The philanthropist lives in Nanyuki but is very interested in all the details relating to the project particularly the question of the titles that buyers will acquire. Your client's directors a Mr. Omondi, a Mr. Ferguson and the philanthropist visit your offices to test your competence to handle the legal aspects relating to the housing project and to be advised specifically on the following;
- (a) The fundamental particulars of sale in the contract document to executed by the parties; [3marks]
 - (b) The distinction between a sublease title and a sectional title; [2marks]
 - (c) The meaning of *common property, management agreement and sectional Plan* in the context of Sectional Properties Act 1987; [3marks]
 - (d) What securitization documentation will be prepared by various legal firms representing Savings & Loan (K) Limited for purchasers that will obtain financing from the bank; [3 marks]
 - (e) What land registry will handle the registration of relevant instruments and why? [2 marks]
 - (f) What transfer instrument the vendor will execute to transfer interest in the units? [2 marks]
6. You are newly recruited by the firm of XYZ & Co. Advocates having just been recently admitted to the Roll of Advocates of the High Court of Kenya. You are assisting the firm's Senior Conveyancing Partner a Mr. Maneno in the perfection of security instruments for National Bank of Kenya Limited.
- (a) You have received a memo from Mr. Maneno in which he generally expects you to explain in detail what you opine your day to day tasks should be as his assistant. Prepare the memo. [6 marks]
 - (b) The firm employs three conveyancing clerks. Mr. Maneno expects another memo from you outlining the tasks that you will delegate to clerks. [4 marks]
 - (c) The firm of XYZ & CO. Advocates has taken out a professional indemnity insurance cover for Kshs.800,000,000/= as they do per the bank's company secretary instructions issue professional undertakings for and on behalf of the bank. You are now tasked with explaining the functions of professional undertakings generally in conveyancing transactions. [5 marks]

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 107: CONVEYANCING

WEDNESDAY 27TH JULY 2011

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer question ONE and any other THREE questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Royal Development Limited has purchased a parcel of land registered as Title number Ngong/Ngong Kiserian/5334 comprising 19 acres in Kiserian, Ngong area in Kajiado District. The company is desirous of developing 19 country town houses which they intend to sell for Kshs. 20,000,000/= each upon completion of construction. It is expected that separate titles in the Developer's name will be issued for each unit. The development is being marketed as a secure gated country-style home community as the prospective buyers will share a main gate and parts of the compound although each home will be on its own 1 acre compound with ample parking and lush flower and vegetable gardens.

You are newly admitted and now practising as a junior associate at the firm of Mwangi & Mwangi Advocates. You are quite knowledgeable in all aspects of property and conveyancing law. The senior partners in the firm have entrusted you with this brief as Royal Development Limited has retained your firm as its conveyancing lawyers for this transaction. The client has expressly informed you that its previous advocates had advised that the "sub-lease" selling regime was inapplicable in this transaction because of the registration regime of the title. In any event the relevant Registrar has also advised the developer that separate titles for each unit can be issued provided the law is complied with. Royal Development Limited has instructed their Architects, Archplan Limited to prepare designs of the country houses which comply strictly with the provisions of the Sectional Properties Act 1987. A sectional plan number 153826 which reiterates the architectural designs but outlines the units and proportionate common areas appertaining to the units has actually been approved by the Director of Surveys and the relevant Lands Registry. As the advocate for Royal Development Limited you are now required to advise prospective purchasers of the 19 units on:

- (a) What titles Royal Development Limited will issue purchasers upon successful sale/purchase of the units? **(3 marks)**
- (b) The substantive law that governs the statutory regime pursuant to which titles will be issued? **(3 marks)**
- (c) The nature of the entity that will be charged with management of the common areas within the development. **(3 marks)**
- (d) The land registry that will handle the registration of the titles and the relevant officer that will issue titles. **(3 marks)**
- (e) What consent(s) (if any) that the developer must obtain to facilitate transfer of the separate titles. The land was previously designated as agricultural but the developer has obtained a provisional change of user from Olkejuado County Council owing to the fact that Kiserian is now designated as *peri-urban*. **(1 marks)**
- (f) What documents Olkejuado County Council and the project architect should issue respectively to confirm that Royal Development Limited has constructed the

country houses as per the drawings submitted and approved upon construction completion. **(2 marks)**

2. Patrick Ndegwa resides in Geneva Switzerland and works for the World Health Organization. His father Maina Ndegwa has negotiated for Patrick to purchase C.R 888392 which is at the outskirts of Nyali for the sum of Kshs. 22,000,000/=. Patrick had given his father a general power of attorney which was registered at the Registry of Documents in Nairobi at 14.15hrs on 5th day of January, 2011 and with which Maina Ndegwa has handled all Patrick's "affairs" including collecting rent from Patrick's two flats in Kilimani in Nairobi. Maina Ndegwa instructs you to handle the transaction relating the purchase of C.R 888392 even though your firm is based in Nairobi. Patrick will pay for legal fees and all disbursements relating to obtaining a proper title. A copy of the title reveals the following;

- i. Transfer to Aboud Abdalla on 8th April 1970;
- ii. Charge to Standard Chartered Bank Limited on 15th June, 1996 for Kshs 1,500,000/=. There are no further entries on the title.

Advice on the following:

- (a) Which Land Registry will issue the official search results of title and deal with the registration of the transfer ultimately? **(3 marks)**
 - (b) Under what statutory regime is title registered and what substantive statute law governs matters not explicitly stated in the registration statute? **(2 marks)**
 - (c) Is the General Power of Attorney referred to above valid for the purpose of this transaction? Explain. **(3 marks)**
 - (d) What steps would you take to ensure that ultimately Maina Ndegwa can execute the transfer instrument for and on behalf of Patrick Ndegwa? **(3 marks)**
 - (e) Aboud Abdalla paid Standard Chartered Bank Limited all sums due and owing relating to the loan but the bank's then in-house lawyer did not give him any documents other than the original title and charge instrument. Advice on the steps necessary in relation to the removal of the encumbrance noted on the title. Aboud Abdalla has instructed that you deal with everything. He only wants the Kshs.22,000,000/=. **(4 marks)**
3. As a recently appointed Advocate of the High Court of Kenya you have been invited by the conveyancing lecturer to speak at the inaugural class of para legal diploma students at the Kenya School of Law on property and conveyancing law. The

students are interested in hearing about the Law Society Conditions of Sale (1989) Edition. Expound on the following;

- (a) The meaning of "*interest*" in a Sale/Purchase contract; **(3 marks)**
- (b) The conditionalities of possession pending completion in a land transaction; **(3 marks)**
- (c) Apportionment of income and outgoings in a land transaction on the contract completion date; **(3 marks)**
- (d) Payment of expenses relating to subdivision of land where the vendor intends to transfer part of his land to a prospective purchaser. **(3 marks)**
- (e) The obligations of a purchaser to the Mortgagee on the contract completion date in a transaction where the purchaser is financed for 90% of the purchase sum. **(3 marks)**

4. Rudolf Longrin, a German citizen, recently came to Kenya for an international convention on trade.

He was very impressed by the business opportunities Kenya has, and he has decided to buy 10 acres of agricultural land in order to grow fruits and vegetables for export to the European market.

He asked around and was referred to Mrs Kiprop who is selling 25 acres out of the 50 acres she owns, comprised in a freehold title registered under the Registered Land Act (Cap 300) as Title No. Nakuru/Kiu/6576. The asking price per acre is 1,000,000/=

On the other hand, Mr and Mrs Mutiso are looking to buy 5 acres of land to build their retirement home. They were told about Mrs. Kiprop's property and are interested in purchasing 5 acres from Mrs Kiprop. They however do not have all the money but have approached Bidii Yangu Bank for a loan of Kshs.5,000,000/= to finance the purchase. Bidii Yangu Bank agreed subject to the land being used as security.

The parties have come to your office seeking advice on;

- (a) What Mrs Kiprop needs to do in order to sell the 25 acres of land. **(4 marks)**
- (b) Whether Mr Rudolf can acquire the 10 acres for agricultural use. **(3 marks)**
- (c) How can Bidii Yangu secure its interest and what completion documents would the bank require to see. **(8 marks)**

Please advise the parties to the intended transactions limiting your answer to the issues raised under items (a),(b) and (c) above.

5. Mrs. Collins enters into an agreement on 1st January, 2010 to buy Blackacre Farm situated in rural Kajiado from B Pty Limited. The farm measures 6 acres. The consideration is the sum of KShs.1,000,000/= per acre payable immediately. The

agreement provides that pending receipt of a request by Mrs Collins to transfer Blackacre Farm to her, B Pty Limited declares that it will hold Blackacre upon trust for Mrs. Collins. On 1st January, 2011 Mrs Collins and B Pty Limited execute the Transfer. Mrs Collins also executes on 2nd January, 2011 another Transfer to transfer the property to the Austrian Embassy for the pricey sum of Kshs.13,000,000/=. The rookie Advocate who prepared the Transfers dated them on the day and the date of execution. Mrs Collins will use the balance to pay off the purchase price of KShs.11,500,000/= for the Townhouse she recently bought in Mombasa City.

Mrs. Collins wants to know the stamp duty consequences of the transactions and has come to see you. Advise Mrs Collins. **(15 marks)**

NB. An assumption is to be made that the true values of properties are as stated in the narrative. If it is considered that any other assumption(s) should be made to assist in answering the questions please state what these assumptions are.

6. Your client Tycun Girumo intends to buy from Bab Ltd a 15-storey commercial building situate along Koinange Street in the City of Nairobi, which building he hopes to lease to a local University for use as a satellite College. The property where the building is situate is currently registered under the Government Lands Act (Cap 280) as a leasehold with a lease of 99 years from 1920. The property will cost KShs.0.5 billion. Though just recently constructed, the property is leased to various tenants.

TASK

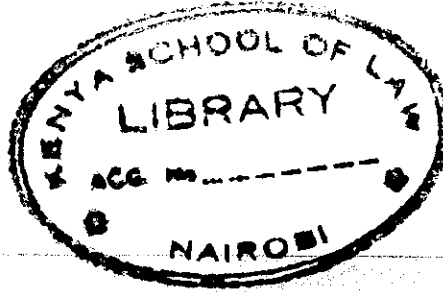
Prepare a brief Memo to your client Tycun Girumo outlining:

- (i) the documents you will require to see and also those you will ultimately prepare. **(8 marks)**
- (ii) the sort of investigation of title, with specific queries, that you will undertake and why. **(7 marks)**

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES



ATP 107: CONVEYANCING

WEDNESDAY 10TH NOVEMBER, 2010

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer question ONE and any other THREE questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. You have been recently admitted as an Intern with the law firm of Toni Tony Tonnie Advocates. The firm acts for Sandra Wangechi and Martin Maina both of P O Box 1841-00602, Meru. They wish to buy with vacant possession a freehold property known as Title No. Naro Moru/Block XX/222 from Patrick Maurice who has decided to relocate to Mombasa. The freehold property is a 40 acre agricultural farm registered under the Registered Land Act (Cap 300) and is situate in rural Nyahururu. The purchase price agreed is KShs. 40,000,000/=. Patrick intends to use part of the 20% deposit payable towards purchasing a traditional Swahili yacht for leisure rides around the soon-to-be-constructed Nyali Marina and also to clear some outstanding "taxes" on the land due to the local county council. Sandra and Martin have no objection to this if they get possession immediately. The property, you are told, is registered in the joint names of Prof. Patrick Maurice and his wife Sally Maurice who is now deceased. They were registered as joint proprietors and this is still reflected in the title register. A copy of the Title does not reveal any restriction or encumbrances on the proprietorship or title. Patrick, who is a miser, has instructed the cheap law firm of RunDMC Advocates and a junior litigation associate has hastily drawn the Sale Agreement which is annexed below as Appendix 1.

You are tasked with the brief and in particular to assist in approving the draft and advising Sandra and Martin on the transaction generally.

- i. Outline the Investigation of Title you will recommend to be undertaken. (4 marks)
- ii. What Completion Documents would you expect to receive on the Completion Date. (3 marks)
- iii. List and explain fully any amendments you would make to the draft contract. Do not redraw the Agreement. (8 marks)

(This is the Appendix referred to in Question # 1 above)

Appendix 1

AGREEMENT

1. **Date:** 12th November, 2010
2. **Vendor:** Patrick Maurice & Sally Maurice both of Box 12800-80400, Mombasa
3. **Buyer:** Sandra Wangechi & Martin Maurice both of Box 1841-60602.
4. **Property:** Title No. Naro Moru/Block XX/222 a freehold.
5. **Incumbrances:** Nil save easements.
6. **Completion Date:** 90 days from date hereof.
7. **Purchase Price:** KShs.40, 000,000/=.
8. **Deposit:** KShs.8,000,000/= payable to RunDMC Advocates as stakeholders upon execution of this agreement.
Balance of KShs.32,000,000/= on completion.

9. **Outgoings:** *Land Rent payable by Vendor all others by Purchaser.*
10. **Agreement for Sale:** *The Vendor has agreed to sell to the Buyer the property and the interest sold is freehold.*
11. **LSK Condition:** *The LSK Conditions of Sale (1989) Ed will not apply to this Agreement.*
12. **Stamp duty:** *The Buyer shall be liable to pay the stamp duty of KShs.1,600,000/= on the purchase price. Each party shall pay his own Advocates fees.*
13. **Advocates:**
 1. *RunDMC Advocates for the Vendors.*
 2. *Toni Tony Tonnie Advocates for the Buyers.*
14. **Possession:** *Possession shall be granted to the Purchaser on the Completion Date.*
15. **Execution:**

<i>Executed by Vendor</i>	1. <i>Patrick Maurice</i>
<i>as a deed</i>	2. <i>Patrick Maurice for Sally Maurice</i>

In the presence of _____
ADVOCATE

2. Grace has approached Land Bank Limited for a development loan of KShs.3,000,000/=. As security she has offered Land Bank Limited her property situate in Kitale and known as Land Reference No. 209/888 which is a leasehold property from the Government of Kenya with an annual rent of KShs.10,000/= and is registered under the Registration of Titles Act (Cap 281). Grace recently pledged the property to Daima Bank Limited whose security thereon is duly registered and perfected. Daima Bank Limited will not release or discharge the property as they are still owed over KShs.1,000,000/=. Land Bank Limited do not have a problem taking the same property as security and Daima Bank Limited have agreed to grant their consent to any such security in favour of Land Bank Limited. Land Bank Limited's newly engaged Legal Officer, who is not a qualified Advocate, has sent to your law firm a letter of instructions to prepare a "Further or Second Legal Mortgage" in Land Bank Limited's favour. Wakili Musho is acting for Daima Bank Limited.
- (a) What security will you advise Land Bank to create and take? (1 mark)
- (b) Distinguish betwixt a "Further Legal Charge" and a "Second Legal Charge". (2 marks)
- (c) What are two possible disadvantages of a Second Charge to a Second Chargee and how may such disadvantages be addressed? (3 marks)
- (d) Outline the steps and process of perfecting Land Bank Limited's security in the instant case. (6 marks)
- (e) What are the stamp duty consequences of the intended transaction. (3 marks)

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

AUGUST/SEPTEMBER 2010

CONVEYANCING

Instructions

- (a) Answer Question One and any other Three Questions
 - (b) Question One is Compulsory
 - (c) All Questions carry 15 Marks each
 - (d) Marks May be lost for illegibility
 - (e) Time allowed is 3 Hours.
-

1. Kartar Singh & Co. Limited owns 6.5 hectares of land in Lavington area of Nairobi. The title is a conveyance registered as N. Folio 699 Volume 328 File 1922. Nirmal Kartari agrees to purchase 2.3 hectares of the said piece of land for the sum of Kshs. 55,000,000/=. He is being financed partly to the tune of 30,000,000/= by Savings and Loans (K) Limited on the basis of the title for the 2.3 hectares. He is pledging another two parcels of land registered as I.R 449162 and Mombasa Municipality/ Block 1/ 163 to secure the two advancements of the Kshs. 10,000,000/= each to finance the purchase Lavington land. He has in his savings account Kshs.5,500,000/= and is therefore ready and able to pay the deposit. His wife will provide the stamp duty moneys for all the transaction and pay legal and valuation fees and any incidentals.
- (a) What statutory regimes govern the titles in respect of the three parcels of land above referenced? (3 marks)
 - (b) What transfer instruments will Kartar Singh & Co Limited execute in favor of Nirmal Kartari for the transfer of the interest of the 2.3 hectares (3marks)
 - (c) What security documents will the financiers advocates draw to secure the total advancement of the sum of Kshs. 50,000,000/= (5marks)
 - (d) What pre-contract processes and procedures govern the sale of the 2.3 hectares? (2marks)
 - (e) Which land registries will handle the registration of the instruments in this transaction and why? (2marks)

2. Henry Mulinge Mwose was issued a 99 year leasehold title for a parcel of land which was previously un-alienated government land in Parklands area of Nairobi. The land is registered under the provisions of the Registration of Titles Act and the residue of the leasehold term is 89 years. He had in compliance with the provisions of the title constructed 32 Apartments on the property which he has been leasing but now wishes to sell the apartments as he has heard rumors that a government road may be traversing through his property. You are newly admitted as an advocate of the High Court of Kenya working for the firm of MNNA Advocates in the Conveyancing Department.
- (a) Mr. Mwose seeks your advice in relation to the impending government demolition of his prime property and what options are available to him in law. Advice. (5marks)
 - (b) Mr. Mwose seeks your further advice on how to sell the individual Apartments given that he has leased each apartment on one year tenancy basis. The Tenancy Agreements provide for a one month notice to terminate on the part of each party. (5 marks)
 - (c) Mr. Mwose seeks your further advice on the distinction between a Management Company in the sub-leases regime selling model and a Real Estate Company? (5marks)
3. The Board of Trustees of the National Social Security Fund has developed 5668 low and medium cost housing in Embakasi and Pipeline areas of Nairobi City for sale to "average" Nairobians on a Tenant Purchase Agreement arrangement. You are newly recruited as in-house lawyer for NSSF and are now working as a legal officer at NSSF at the Head Office in Nairobi.
- a. Most of the prospective clients want to understand the concept of Tenant Purchase Sales before executing any documents with NSSF or paying NSSF any moneys. Explain. (5marks)
 - b. Discuss the salient legal distinctions between sale of residential units under the Tenant Purchase Scheme arrangement as distinguished from sale under the sub lease regime model. (5marks)
 - c. What substantive legal regime governs titles issued under the Sectional Properties Act, 1987? (3marks)
 - d. What unique features relating to ownership of common property by purchasers distinguishes a sectional title from other titles issued under the same substantive statute that governs sectional titles? (2marks)

3. On the first day of your internship you receive the following Memo from your Master who simply wants to test your conveyancing skills and knowledge.

**TUCHMAN & ASSOCIATES
INTERNAL MEMO**

TO: KSL Trainee Advocate
FROM: Conveyancing Partner

We act for Steve. Steve has recently bought a property in Muthaiga, Nairobi from Victor. The property is registered as Title No. Nairobi/Block 2/16. The property is a freehold property and the Title was issued to Steve under the Registered Land Act (Cap 300, Laws of Kenya) in the year 2009. He wants to sell the property to Wango but Steve has not been able to trace his original Title document which he misplaced either when he moved house to this new property last year or lost it somewhere in his posh offices in Mombasa where he now works and stays with his family. He is not sure. We expect Steve at 10.30 a.m. today. Please let me have a brief addressing the following issues in the next forty minutes.

- (a) What Title document did the Registry issue to Steve? (2 marks)
- (b) Which Registry registered the Transfer in favour of Steve? Identify the form of transfer which Steve will be expected to execute. (4 marks)
- (c) Advise Steve on the process and procedure of acquiring another Title now that the Title he had is "dead" lost. (9 marks)

Address the above issues by way of a Memo in reply to the Conveyancing Partner.

4. You are newly admitted to the roll of Advocates and now work for K& P Advocates. The senior partner in charge of the conveyancing department introduces you to a new client Joash Mwaringe. Joash says he has fired his previous advocates and hence the reason why he personally conducted the search for a property he is desirous of acquiring in Kajiado.

Joash is desirous of purchasing a property registered as Kajiado/Kaputei/13934 from one John Nanyui. He had also entered into a contract for the purchase of another property registered as I.R Number 88371/4 situate along Mombasa Road and paid the full purchase sum of Kshs. 10,800,000/= directly to the vendor Peter Mwarube. The advocates he was dealing with previously were not progressing satisfactorily with the transaction and he could not get title for the Mombasa Road property. He gives you copies of the official search for Kajiado/Kaputei /13934 and you notice that the certificate of official search reveals "*caution pending registration*" in respect of pending applications. The certified copy of the title in respect of I.R 88371/4 reveals that a *purchaser's caveat* had been registered by one Stephen Mkubwa before the contract of sale and purchase was signed. Joash now seeks your advice on how to proceed with the both transactions as he is on his part ready to pay all that is required to obtain titles for both.

- a. Explain the implications of "*Caution pending registration*" in respect of the title registered as Kajiado/Kaputei/13934 and what options are available to Joash Mwaringe. (5 marks)
- b. Explain the implications of "*purchaser's caveat*" in respect of title number I.R 88371/4 citing also the pre requisites for the registration of a purchaser's caveat. (5 marks)
- c. Explain the distinction between a caution and a caveat citing also the statutory regimes pursuant to which either instruments may be lodged and registered. (5 marks)

5. You are newly recruited as the Registrar of Titles working under the supervision of the Chief Lands Registrar at Ardhi House Nairobi. You report to duty one morning and receive an internal memo from the Chief Lands Registrar advising you that the Chief Valuer has advised him vide another memo (which is attached to the Chief Lands Registrars memo) that there were fraudulent dealings involving title numbers I.R 889436, I.R 889437 and I.R 889438 in which the government lost approximately Kshs. 15,000,000/= in unpaid stamp duty through understatement of the land values. The memo goes on to explain that the transfers for the three properties were under-stamped. You call for the deed files and notice that transfers for the three properties in favor of Judas Mansonko Mapesa were effected the previous week by a Registrar who has since been transferred to Mombasa by the Commissioner of Lands on the recommendation of Kenya Anti Corruption Commission. The Chief Lands Registrar's memo instructs you to deal with the fraud to safeguard government interest.

- (a) What action would you take to ensure the payment of the Kshs. 15,000,000/= stamp duty fraudulently evaded by Judas Mansonko Mapesa? **(5 marks)**
- (b) In your tray you notice that the assisting clerks have marked to your attention two trust deeds, a transfer in respect of Nairobi/Block 78/114, an unstamped transfer for I.R 338946, and a transfer in respect of C.R 888901. Whose attention do you mark and direct these documents. **(7 marks)**
- (c) An old Kenya School of Law classmate Ms Natalie Batuli rings to inquire what an "Assent" is and under what circumstances she should draw one. Explain. **(3 marks)**

6. You are newly admitted to the Roll of Advocates and working for a local Non Governmental Organization that promotes legal literacy on land and environment issues in rural areas. Your boss has sent you to a legal literacy forum involving chiefs and local elders to conduct basic legal training. The Training Needs Assessment report requires that you impart legal literacy to the participants on the procedures for sale and purchase of land in view of the numerous disputes that the chiefs and village elders have to deal with. You now need to explain:

- (a) Why a sale agreement does not effect a transfer of title from a vendor to a purchaser and what document(s) would effect transfer. All the titles being cited are Title Deeds registered under the Registered Land Act (Cap 300,Laws of Kenya); **(3 marks)**
- (b) The role of the Divisional and District Land Control Boards in sale and purchase of land transactions; **(3 marks)**
- (c) The distinction between a Transfer of Land and a Transfer of Lease for land registered under Cap 300; **(3 marks)**
- (d) What legal remedies registered proprietors have where government forcefully acquires their land for public purposes? **(3 marks)**
- (e) Which officer(s) at the District Lands Office should be involved in resolving numerous boundary disputes between various proprietors whose properties neighbour or adjoin each other? **(1 mark)**
- (f) What document(s) could help resolve the boundary disputes for land registered under the Registered Land Act. **(2 marks)**

4. Bruce Kamau has recently leased an Apartment in Nairobi's Kilimani Area at a monthly rent of Kshs. 65,000/=. Bruce is your client. He got possession of the apartment prior to signing the tenancy agreement. He has immediately after taking possession painted and refurbished the apartment with colors and furniture of his taste. Bruce has since realized that the flat's roof is leaking. The sitting room wall is also cracking. Bruce is further required to pay Kshs. 116,000/= as legal fees to the landlords advocate even though he only got a 6 month initial tenancy according to the draft Tenancy Agreement. Bruce now seeks your advice on:-

- (a) His obligation in relation to the leaking roof and the cracking sitting room walls; **(3 marks)**
- (b) The procedure for calculating legal fees for advocates involved in drawing and engrossing the tenancy agreement; **(3 marks)**
- (c) The landlord's other obligations generally in relation to his rights as tenant; **(3 marks)**
- (d) The landlord is demanding that he contributes towards the payment of his annual land rent and rates which are calculated as part of his monthly service charge; **(3 marks)**
- (e) Bruce's rights generally as a tenant living in the apartment; **(3 marks)**

5. You have been instructed by the Kenbank Ltd in connection with a proposed loan to Anita. Anita is a qualified land economist. The loan is to be secured on her proposed purchase of Greenland House. Greenland House is a pretty cottage located on the suburbs of Nairobi and the property where it is situate is registered as leasehold from the Government of Kenya under the Government Lands Act (Cap. 280). Anita recently applied for the mortgage on the property having started negotiations herself and has conducted her own conveyancing. You are not instructed by her and are simply looking after the interest of Kenbank Ltd. Completion is exactly one month away. You wrote to Anita confirming Kenbank Ltd's instructions with a request that she confirms if she is still doing her own conveyancing. She has now replied confirming she is and sends to you documents she believes you require. They are;

- (i) A lease drafted by herself in her favor executed by her but not yet executed by the Vendor.

Anita states and deems that to be her Transfer.

- (ii) A copy of the last Indenture by the Government of Kenya to the Vendor. Anita states that to be the title document.

- (iii) A sale Agreement drawn by Abbey & Richards Advocates who act for the Vendor executed by the Vendor only.

- (iv) A local authority search disclosing nothing of an onerous or unusual nature.
- (a) Comment on the sufficiency and/or deficiency, if any, of the documents supplied. **(5marks)**
- (b) List with reasons any other documents you may require and/or you will prepare or draft to help complete the transaction. **(5marks)**
- (c) List the subsequent steps you will take to perfect your client's security. **(5marks)**

6. Your firm acts for Eric who wishes to take a commercial nine year lease for a rental of Kshs.1 million per year. The draft documents have just arrived from the Lessor's Advocates and you have been asked by your Principal partner to check the draft lease and make sure it is acceptable.

- (a) Compile a check-list of the main points of concern about the draft lease to be checked and considered for this purpose. **(5marks)**
- (b) Eric has subsequently been fully advised by you and having executed the Lease documents now wants to know from you how, if possible, the lease can ever be terminated.

Outline the various modes of terminating leases generally. **(5marks)**

- (c) Explain to Eric the procedure for assessment and payment of stamp duty for the lease and how leases are registered. **(5marks)**

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

NOVEMBER, 2009

CONVEYANCING



Instructions

- (a) Answer question ONE and any other two (2) questions
- (b) Question 1 is compulsory and carries 20 marks
- (c) All other questions carry 15 marks each
- (d) Marks may be lost for illegibility
- (e) Time allowed is 2 hours

- 1 (a) "An encumbrance cannot defeat the transfer of possession as between a landlord and tenant. An encumbrance could however fetter the outright transfer of an instrument purporting to convey a interest from a landlord to tenant."

Discuss this statement briefly.

(10 marks)

- (b) Distinguish and discuss the following conveyancing law terms:

- (i) Charge and Mortgage;
- (ii) Prohibition and Inhibition.
- (iii) Lease and Tenancy

(10 marks)

2. (a) What is a caveat?

(5 marks)

- (b) Who may lodge a caveat against a registered proprietor's title?

(5 marks)

- (c) What is the effect of a caveat once the instrument has been registered against title?

(5 marks)

3. (a) In all borrowing transactions where land is pledged as a security for the advancement of money the main concerns of the lender are the value of the property and the authenticity of the title. Explain why.

(5 marks)

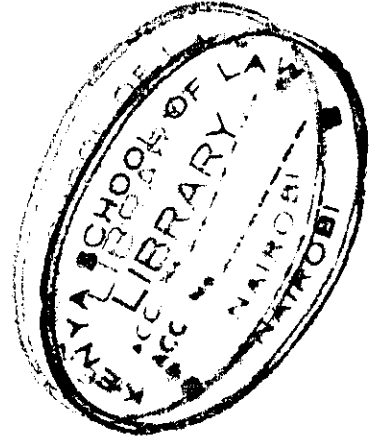
- (b) Explain the duties of a borrower's advocate in a borrowing transaction? (5 marks)
- (c) Outline the duties of a lender's Advocate in a borrowing a transaction. (5 marks)
4. (a) Explain the difference between a sublease title and a sectional title. (5 marks)
- (b) What is the substantive law that applies to sectional titles registered under the Sectional Properties Act 1987? (2 marks)
- (c) What instrument of Transfer should a conveyancing advocate prepare to effect:
- (i) A transfer of a sublease title? (4 marks)
- (ii) A transfer of a sectional title for a leasehold interest? (4 marks)
5. (a) Investigation of title by a purchasing party's advocate is a fundamental duty in every sale/purchase transaction involving land. Explain why. (5 marks)
- (b) What is the importance of ascertaining that a vendor has paid all land rent and land rates as part of the initial due diligence process by a purchaser's advocate? (5 marks)
- (c) What government authorities deal with issuance of demand notes for land rent and land rates? (5 marks)
6. (a) What are completion documents? and what is the completion date in a sale/purchase of land contract? (10 marks)
- (b) The completion date is not necessarily the date when the property in a sale/purchase contract is transferred to the purchaser. Explain briefly? (5 marks)

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

JUNE 2009

CONVEYANCING



Instructions

- (a) Answer **QUESTION ONE** and **ANY OTHER TWO QUESTIONS**
 - (b) **QUESTION ONE** is **COMPULSORY** and carries 20 marks
 - (c) All other questions carry **15 marks** each
 - (d) Marks may be lost for illegibility
 - (e) **Two (2) Hours** are allowed
-

SECTION A (Compulsory)

1. (a) Write short notes on the following:

- (i) Searches and pre-contract inquiries
- (ii) Land Control Board Consents
- (iii) Stamp Duty
- (iv) Execution, attestation and verification of documents conveying interest in land.

(10 marks)

(b) Where do you find the land registries under:

- (i) The Registered Land Act (Cap.300)
- (ii) The Government Lands Act (Cap.280)
- (iii) The Registration of Titles Act (Cap.281)
- (iv) The Land Titles Act (Cap.282)

(2 marks)

(c) (i) Discuss the nature of deposits in a sale of land transaction.

(5 marks)

- (ii) If a deposit or part thereof is misappropriated by an Advocate who is holding the same as a stakeholder, who bears the loss, if any.

(3 marks)

SECTION B

(Attempt any two questions from this section)

2. (a) Distinguish between ownership of highrise apartment(s) or flat(s) under a sublease regime and ownership of the same under the Sectional Properties Act, 1987.
(4 marks)
- (b) "The enactment of the Sectional Properties Act, 1987 was necessitated by the fact that sub-leases were regarded as "inadequate security by the mortgage institutions." Anonymous.
Expound on this statement.
(4 marks)
- (c) What is a Sectional Plan and how is a corporation constituted under the Sectional Properties Act, 1987.
(4 marks)
- (d) Under the subleases regime, how do individual owners safeguard against the uncertainties of a developer not extending their lease terms upon expiry of the subleases.
(3 marks)

3. (a) On 1 July V's Advocates gave notice to complete to P. The notice read and stated:

"Take notice that V requires P to complete on 25 July at the office of V's Advocate at 2.30 p.m. failing which V will terminate the contract and exercise its right of forfeiture of the deposit paid. In every respect time is of the essence of this notice."

P is the Purchaser, V the Vendor. P's Advocate's office was in a Nairobi Suburb. V's Advocate had his offices within the Central Business District. P's Advocate left his office in plenty of time to get to V's Advocates offices at 2.35 p.m. after a very long scramble with the traffic. On arrival P's Advocate tendered a banker's draft in payment of the purchase price, which V's Advocate promptly refused on the ground that it was late. V's advocate terminated the contract for P's failure to complete in accordance with the Notice to Complete. On the day after V's Advocate had posted the Notice, P's Advocate had telephoned V's Advocate to discuss an unrelated matter. During the teleconversation and without any prompting, P's Advocate stated to V's Advocate that it was "most likely that P will be unable to complete this contract." The Notice had then not reached P, who upon receipt of the Notice promptly gave his Advocate the banker's draft for the balance of the purchase price. On the basis of the teleconversation however, V's Advocate did not bother to pay for the consent to transfer from the Commissioner of Lands. V's Advocate did not also get V to execute the transfer instrument drawn by P's Advocate and duly engrossed. The tenants on the property have however vacated but V still has on the property several motor vehicles parked both in front and at the rear of the property. Several movables belonging to V are also in the house and V's son stays in the servants' quarter, ostensibly to take care of V's motor vehicles and other movables.

(i) Is the Notice to Complete valid? (3 marks)

(ii) Drawing from the above facts, outline and expound in detail what is completion in conveyancing and the role of the respective Advocates at completion time. (12 marks)

4. (a) Discuss the essential prerequisites for a valid and enforceable contract for the disposition of an interest in land as specifically provided for under section 3(3) of the Law of Contract Act (Cap 23) Laws of Kenya. (5 marks)

(b) Explain the purpose of a Deed Plan. (2 marks)

(c) Outline briefly the goals of registration of conveyancing documents, noting to highlight some of the current problems relating to registration of documents in many land registries across Kenya. (8 marks)

5. (a) " A tenant's Advocate's duty is limited to a duty to ensure that the client avails all the disbursements required by the Lessor to the Lessor's Advocate to ensure a successful completion of the lease." Anonymous.

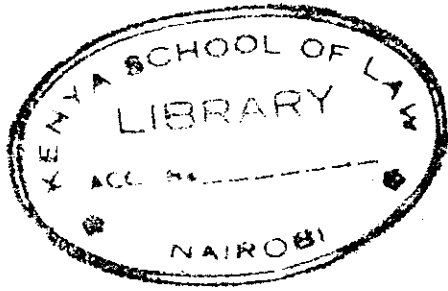
Is the above statement a true reflection of the duties of a tenant's or lessee's Advocate? If not, outline and explain any other duties imposed on a tenant's or lessee's Advocate in a lease transaction other than under the Sectional Properties Act. (8 marks)

(b) Meroka has agreed to lease her residential premises to Boiwo for a term of 5 years. The premises are registered under the Registered Land Act and are currently charged to Lloyds Bank. The Government holds a reversionary interest after Meroka's 99 year lease expires. Meroka instructs you to prepare the lease and complete the transaction. Boiwo, in the meantime, intends to sublet the premises once he has possession and has discreetly told you so.

State in the correct order the steps you would take as Meroka's Advocate in dealing with the transaction up to completion of the necessary instrument. (7 marks)

6. Kudi Bank has agreed to lend Bosco a sum of KShs.50,000,000/= to be secured by legal securities over Land Reference No.37/184 ("Parcel A") owned by Bosco. The Parcel is situated in Kericho and is registered under the Government Lands Act (Cap.280) and is a 99 year leasehold from the Government. The title documents to Parcel A are with Stone Bank who have a registered security on the same. Stone Bank will not share a security with Kudi Bank. Bosco owes Stone Bank an aggregate amount of KShs.25,000,000/=. Bosco is ready and willing to pay off Stone Bank and Kudi Bank are willing to assist Bosco in this respect. Kudi Bank is your client.

(a) What document(s) do you need to obtain to finalise Kudi Bank's security successfully. (4 marks)



COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

DECEMBER, 2008

JULY 2009

CONVEYANCING

Instructions

- (a) Answer question ONE and any other THREE questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility
- (d) Time allowed is 3 hours

1. John Ngumi is the registered proprietor of a freehold interest of a parcel of land known as Kajiado Kaputei/Block1/3981 registered in Kajiado District. John is desirous of selling his property for Kshs. 1,500,000/= to Elizabeth Natia who resides in Dubai. Discussions between the parties end up in an agreement and John and Elizabeth instruct the firm of Maradony & Co. Advocates to represent them. You are freshly admitted as an Advocate of the High Court of Kenya and are working in the Property Law and Conveyancing Department of Maradony & Co. Advocates. At the initial meeting Elizabeth is more interested in testing your competency and capability to handle the transaction on her behalf. She asks you to explain the following:

- (a) What the Property, Proprietorship and Encumbrances Sections of the title mean? (5 Marks)
- (b) What instrument of transfer you will prepare and which Lands Registry would handle the registration of Transfer Instrument in her favour. (3 Marks)
- (c) In what ways the interest being transferred to her differs from ownership of her Westlands Apartment where the head title is registered under the Registration of Titles Act (Cap 281 of the laws of Kenya) and she owns only one of the 46 flats on the plot. (7 Marks)

2. Kyle Otieno is a client of the firm Maradony & Co. Advocates. Kyle is purchasing a parcel of land in Karen's agricultural zone. The land is registered as Land Reference Number 1593/14339 in N43 folio 1593 Volume 4339 File 09 under the Government Lands Act (Cap 280 of the Laws of Kenya). He has made part payment of a sum of Kshs. 3,500,000/= to Mr Avoy Amollo, the vendor, leaving a balance of Kshs. 5,000,000/= The completion date is 90 days from 1st June 2009. Kyle trusted Mr Avoy and hence agreed to pay a big initial deposit to him. Kyle has heard that Mr Avoy is planning to sell the parcel to one Jane Maina for 10,500,000/=, if Kyle fails to complete the transaction. Kyle is desperate to save the situation and complete the transaction because S & L Kenya Limited has agreed to finance the balance of Kshs. 5,000,000/= Maingi & Co. Advocates

are acting for S & L Kenya Limited. You are a conveyancing advocate with the firm of Maradony & Co Advocates

(a) Advise on the steps if any, that you will take to protect Kyle's interests before the completion date. (5 Marks)

(b) (i) What Transfer instrument would the firm of Maradony & Co Advocates draw on behalf of Kyle to facilitate the transfer of the property? (2marks)

(ii) What completion documents would you expect Mc Avoy's Advocate to forward to Maingi & Co. Advocates to enable them register the security. (3 Marks)

(c) Explain the critical procedures (processes) that must be completed before S & L Kenya Limited can release the Kshs. 5,000,000/= to Mc Avoy's Advocates. (5 Marks)

3. Lydia Mwarania is a tenant in a commercial property on Ngong Road Nairobi. She has a 6 year lease from 1st January 2006 and is disputing a notice from her landlord, Bartinnis Limited, increasing her rent by 16% from Kshs. 28,000/= to Kshs. 32,480/=. The increase is said to be pursuant a directive by the Minister of Finance in the 2007 budget. Lydia has also received another letter from the landlord of her residential house communicating an increase of rent from Kshs. 16,000/= to Kshs. 18,560/= in view of the Finance Minister's "directives" aforesaid. Her residential house tenancy agreement had no provision for rent increase. Lydia requires your advice.

(i) Advice on the legality or other wise of both rent increments. (7 Marks)

(ii) Which government authority collects the rent "increase" for commercial premises and what pre-conditions must the landlord meet to be able to charge rent "increase." (4 Marks)

(iii) Lydia is also questioning why she has to pay stamp duty on the lease yet UNDP a tenant on the same floor as herself is exempt from such payment by the Minister.

Explain the reasons briefly. (5 marks)

4. You were recently admitted as an Advocate and on your first day at work your boss introduces you to a new client who seeks to merely have an already drawn contract explained to him. The vendor's advocate wrote the contract. The purchaser, your new client wishes to save on legal fees and requires an advocate to clarify matters on the contract. Your boss is a litigation lawyer with little interest in conveyancing practice. He hands over the brief to you and instructs you to attend to the client. The client expects you to explain in ordinary layman's language the following provisions of the sale/purchase contract.

Briefly expound on the said provisions of the contract.

(a) "Without costs to the buyer, the seller is to provide the buyer with proof of the title to the property and his ability to transfer it, or procure its transfer." (5Marks)

(b) "The buyer may within 7 days of a matter relating to the authenticity of title coming to his attention raise written requisitions on that matter".
(5 Marks)

(c) "On the completion date all the income to the property and outgoings shall be apportioned."
(5 Marks)

5. Pesa Bank has agreed to lend Mr. Tanui a sum of Kshs.6,000,000/= to enable him purchase a house built on Land Reference No. 209/21616 situated in Nairobi City and owned by Mr. Nyabuto. The title is held on a leasehold interest for the residue of 70 years from 1.7.1980 from the Government of the Republic of Kenya. The title to the property is registered under the Registration of Titles Act (Cap 281). Pesa Bank instructs you to perfect the security. Mr Tanui also instructs you to act on his behalf. The property is still charged to Lobifirm Limited to secure a loan of KShs.1,000,000/=. Lobifirm Limited are willing to release the property and have instructed Wakili Sugu to act on their behalf

(a) What information do you require to enable you prepare the Transfer?
(5 marks)

(b) Outline the steps you will take in the preparation of and ultimate registration of the Transfer.
(7 marks)

(c) Mr Nyabuto wants to know why you have prepared a "Transfer" and not an "Indenture of Conveyance" as the Instrument to convey the interest to Mr. Tanui. Explain to him.
(3 marks)

6. Laya Bank Ltd are intent on and have agreed to advance to Ms. Asin Kshs.2,000,000/= on the security of Ms. Asin's property registered as No. 1/128 and in which Ms. Asin has a freehold interest. The property is registered under the Government Lands Act (Cap 280). The title documents are still held as security by Marx Bank for an earlier advance to Ms. Asin. Marx Bank are being represented by Davo Advocates. Laya Bank Ltd instructs you to act on their behalf.

(a) Identify the document(s) and or correspondence, if any, which you will draft towards the successful completion of your instructions
(3Marks)

(b) Outline how you will carry out your instructions.
(5 marks)

(c) Laya Bank Ltd would also wish to know what remedies are available to them, if any, and how to exercise the same in the event of default by Ms. Asin in repaying the loan.

Advise
(7 marks)

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION

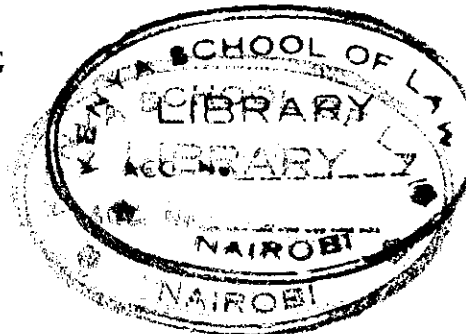
TO THE ROLL OF ADVOCATES

DECEMBER, 2008

CONVEYANCING

Instructions

- (a) Answer question ONE and any other THREE questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility
- (d) Time allowed is 3 hours



1. Jolly ("Purchaser") and Christabel ("Vendor") entered into and executed a contract on 11th September 2007 for the sale of Karenacre on which stood a double storey house. The contract provided, inter alia, for "completion to take place at 12 noon on 10 December 2007"; "Vacant possession to be delivered on completion."; "The Law Society of Kenya conditions of sale 1989 shall apply."

The deposit paid was 20% of the purchase price. On 5th October, Jolly's Advocate phoned Christabel's Advocate to say Jolly's funds had not come through from overseas because of banking restrictions imposed unexpectedly in South Africa and that Jolly would not be completing on 10 December. The news came as something of a relief for Christabel's Advocate who was having difficulty in contacting Christabel to ask Christabel to sign the transfer and surrender the original title deed. On the basis of the news by Jolly's Advocate, Christabel's Advocate ceased trying to get Christabel. Christabel's Advocate however took no steps to terminate the contract at that stage.

During a Court session, Jolly's Advocate overheard about the difficulty that Christabel's Advocate was having in tracing Christabel. He also drove by Karenacre on 9th December 2007 and saw that the house still had sitting occupants, who confirmed to him that they would only vacate on the 30 of April 2008. Jolly's Advocate turned up unexpectedly at the offices of Christabel's Advocate on 10th December 2007 at exactly 11.55 am and offered to complete the purchase. Of course, he did not tell Christabel's Advocate that he did not have the balance of the purchase money with him. Christabel's Advocate said that completion was impossible because he did not have a signed transfer. Jolly's Advocate immediately terminated the contract. However as he left the premises Jolly's Advocate left slip that he did not have the purchase money. Christabel's Advocate then walked back to his office and immediately drafted a termination-of-contract letter also forfeiting the 20% deposit. The very next day on the 11th of December 2007 and only after having received the termination letter from Christabel's Advocate, Jolly's Advocate received the money from South Africa.

Advise Christabel

- (a) On whether Christabel's termination was valid

(3 marks)

(b) If Christabel's termination was not valid, on whether Jolly's Advocate could validly terminate the contract and how.

(5 marks)

(c) On the nature of "Deposits" in a contract for sale and the purpose they serve.

(7marks)

2. Gordon negotiates with Juliet for the sale to her of a commercial property and agrees on a price of Kshs.30,000,000/=. Gordon receives a letter from Juliet in the following terms:

"I, Juliet, agree to purchase your property situate along K Street, being the land in the certificate of title L.R. NO. 209/1666 for the sum of Kshs.30,000,000/= payable by installments as follows:

(a) 2,000,000/= payable immediately.

(b) 16,000,000/= payable at completion in 6 weeks, once the transfer is registered.

(c) 12,000,000/= payable 2 weeks after completion

Please ask your lawyer to prepare contracts and forward them to my lawyer to formalize the arrangements."

Gordon writes back accepting the offer.

One week later, Juliet's lawyer receives a contract and discusses it with Juliet. After Juliet's lawyer discusses the contract with Gordon's lawyer, it seems that there are some other matters that cannot be resolved. Juliet then says she no longer wishes to purchase but Gordon says there is a binding contract constituted by Juliet's letter and his acceptance.

(a) Advise both Gordon and Juliet who have asked you to mediate the dispute.

(5:marks)

(b) Assuming the point of disagreement and departure was only the form of undertaking to be given for the payment of the balance of the purchase price

(i) Advise the circumstances under which an undertaking for the Kshs.12,000,000/= would be given to facilitate completion.

(4 marks)

(ii) Draft an appropriate undertaking directed to Gordon's lawyer.

(The draft should not exceed three hundred words)

(6 marks)

3. Steiner works for ExymBank Plc based in the United Kingdom and has recently been redeployed to Kenya to head its newly constituted branch. Daniel has applied for a loan from ExymBank Kenya Limited and Steiner has approved the same on the security of a charge over Daniel's property situated in Nairobi and known as Title No. Nrb/Block 182/999, which property is registered under the Registered Land Act (Cap 300, Laws of Kenya).

Daniel signs the facility letter, deposits his original title with ExymBank Kenya Limited and is given the loan amount. He, however, does not sign the formal legal charge instrument thanks to the bank's

external lawyers who fail to get him to sign the same for further processing. Five months into the 10 year loan period, Daniel defaults in making the monthly installments and goes into hiding.

You have just been recruited as a Legal Assistant with ExymBank Kenya Limited and you eavesdrop on an argument between Steiner and the bank's chief legal counsel on whether the bank has a security or not. Steiner was insisting that he bank has a security in the form of an equitable mortgage, but the chief legal counsel thought and stated otherwise. Steiner sends you an e-memo seeking your candid opinion on whether the bank has an enforceable security and if so, how it can be enforced.

- (a) Opine to and advise Steiner. (6 marks)
- (b) State three (3) ways through which equitable mortgages or charges are created. (6 marks)
- (c) Outline the disadvantages, if any, of equitable mortgages or charges. (3 marks)

Barbara is the owner of an estate in fee simple of a commercial property situate along Ngong Road and registered under the Registration of Titles Act (Cap 281, Laws of Kenya). Barbara entered into a lease for a term of seven (7) years in favour of Tim and Calvine who are both practising in partnership as intellectual property Advocates with blue chip companies as their clients, amongst other international clients. The lease included the following terms:

- Clause 17 The tenant is to pay rent quarterly in advance.
- Clause 18 The tenant is to put and keep the demised premises in good and tenantable repair, reasonable wear and tear excepted.
- Clause 19 The tenant is not to assign, sublet or part with possession without the written consent of the landlord.
- Clause 25 The entire demised premises shall be used as office space only or any user related thereto.

Prior to execution of the lease Tim and Calvine disclosed to Barbara that they would, *inter alia*, use their office space to host intellectual property arbitration disputes under the auspices of the World Intellectual Property Office (WIPO) based in Geneva. After two years, Barbara is about to let the two neighbouring rooms to be used as beauty and massage parlours respectively. Barbara also intends to let out one other room as a Ladies Salon. The noise slowly becomes unbearable and on two occasions WIPO refuses to have its arbitration conducted at Tim and Calvine's office. In the meantime, Barbara's half-brother also shows up and starts demanding that the monthly rent be paid to him and wants unlimited access to the cloakroom next to Tim's office. Barbara does nothing to discourage or stop her brother. The lease document itself is yet to be registered although prepared executed and dated.

Tim and Calvine come to you for advise seeking to know:

- (a) Whether they can validly terminate the lease with Barbara.

(6 marks)

(b) Identify and explain the documents or correspondence you need to prepare to finalize the security in favour of Kudi Bank.

(6 marks)

(c) Outline briefly the duties of a Borrower's Advocate in a conveyancing transaction.

(5 marks)

.....

- (b) What steps need to be undertaken to complete the registration of the Lease assuming they decide to complete the last five years of the lease.

(6 marks)

- (c) The remedy or remedies they may have against Barbara.

(3 marks)

5. Kenlysia Martins is a Kenyan citizen and the registered proprietor of all that parcel of land registered as I.R 449538 (L.R. No. 209/12915/375) situate in Syokimau area of Mavoko Municipality. Kenlysia resides in Tanzania where she is engaged in the mining of Tanzanite. She appoints the real estate firm of Flegg & Associates to act on her behalf in the sale of the above-referred property. She specifically gives a Power of Attorney to the Managing Director of Flegg & Associates a Mr. Paul Muema, to act on her behalf. The law firm of Maisyo & Co. Advocates agrees to act for her (the vendor) while the firm of Belhorn & Co. Advocates agrees to act for the identified purchaser of the land. You have recently been admitted as an advocate of the High Court of Kenya and are now working for Maisyo & Co. Advocates in the conveyancing department.

- (a) Advise on the relevant steps that you will take in ensuring that a valid sale/purchase contract is signed.

(5 marks)

- (b) After the signing of the sale/purchase contract the purchaser pays the 10% deposit of Kshs. 500,000/= which your firm holds as a stakeholder. Just before completion you receive a report from Flegg & Associates that there are people constructing on the land. The Law Society of Kenya Conditions of Sale (1989 Edition) were incorporated into the contract.

What steps would you take to safeguard the vendor's interests?

(5 marks)

- (c) The contract was signed on 31st October 2007 and was to be completed within 90 days. It is now 31st March 2008 but you have not heard from the purchaser and/or his advocates. Flegg & Associates inform you that the persons who had entered the land were just about to complete their houses and were claiming ownership on the basis of a subdivision scheme which the purchaser undertook and which saw the land 'sub-divided' and 'sold' to them.

What further steps would you take to safeguard the vendor's interests at this point?

(5 marks)

6. Patricia Kinoty is desirous of disposing of her apartment in Westlands Nairobi to acquire two flats in Nyayo Estate Embakasi. The apartment is owned on a lease title in a development comprising 45 other apartment units.

Nyayo Estate, Embakasi is an NSSF project where housing units are sold to low and middle income Kenyans on a Tenant Purchase Scheme under the Sectional Properties Act 1987. Patricia intends to purchase the Embakasi units as a Tenant-Purchaser.

You have recently been admitted as an advocate of the High Court of Kenya and are working in the conveyancing department of Maisya & Co. Advocates where Patricia is a client. Patricia also introduces you to Pauline Nyamito who is purchasing the Westlands apartment and she is ready with

the full purchase sum of Kshs.16,000,000/=. Pauline also engages your firm to act for her. The NSSF apartments are selling for Kshs.3,750,000/ each. Patricia instructs you to deduct Kshs.900,000 from the sale proceeds of the Westlands apartment for the deposit to be paid to NSSF and for your legal fees deposit.

(a) What documents must Patricia deliver to you to enable you proceed with the Westlands apartment sale transaction?

(3 marks)

(b) What transfer instrument will you prepare to ensure the transfer of the property from Patricia to Pauline and why?

(3marks)

(c) Patricia instructs you to get in touch with NSSF for purposes of bringing into effect the purchase transaction of the two units. She delivers to you copies of two letters of offer for flat numbers 140/88/10 and 140/87/53.

How do you go about the purchase transactions and what documents will she execute ultimately before taking possession of the two units?

(4 marks)

d) Pauline engages you in a discussion regarding the fundamental differences between her Westlands purchase and Patricia's Embakasi purchase.

Explain the differences to her.

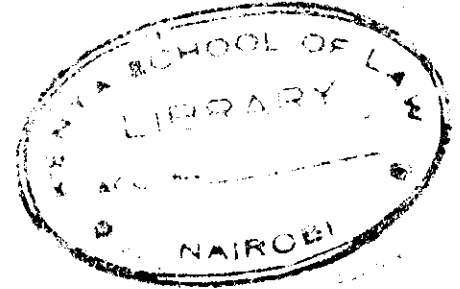
(5 marks)

COUNCIL OF LEGAL EDUCATION

EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES

NOVEMBER, 2008

CONVEYANCING



Instructions

- (a) Answer QUESTION 1 and ANY OTHER TWO (2) QUESTIONS
- (b) QUESTION 1 is COMPULSORY and carries 20 marks
- (c) All other questions carry 15 marks each
- (d) Marks may be lost for illegibility
- (e) Two (2) Hours are allowed

-
1. (a) In Kenya today the mere existence of title deeds and certificates of title does not guarantee any title to land. Explain why. 5 marks
- (b) Explain the term "unregistered land" and expound on the reasons for advising clients to buy "registered" rather than unregistered land. 5 marks
- (c) What "*safeguards*" are contained in the Law Society of Kenya Conditions of Sale (1989) Edition to protect conveyancing practitioners generally from falling prey to fraudsters? 10 marks
2. (a) Briefly explain the Role of Estate Agents in conveyancing practice. 5 marks
- (b) Discuss and distinguish between the functions of Surveyors, Urban Planners and Valuers and explain their professional roles in conveyancing transactions. 7 marks
- (c) What is the role and relevance of government valuers in conveyancing transactions? 3 marks
3. (a) Discuss briefly the duties of an Advocate acting for a Buyer who is borrowing from a Mortgagee or Chargee. 5 marks
- (b) What are the corresponding duties of an Advocate acting for a 'Selling' Mortgagee? 5 marks

- (c) What is the procedure for conveying Land registered in the name of a deceased person?
5 marks
4. Daniel executes an open contract for the purchase of a residential dwelling "Renace" on 1st August 2008 with a completion date of 30th October 2008. The purchase price is Kshs. 10,000,000/= and the Law Society Conditions of Sale (1989 Ed) are wholly incorporated. What advice would you give Daniel on the following matters;
- (a) The property is situated within the plush Karen land controlled area.
2 marks
- (b) The Land Rates outstanding are Kshs. 800,000/= but the vendor has no money to pay for the same. The vendor wants to use part of the 20% deposit paid to the estate agent as a stakeholder to pay outstanding Land Rates.
3 marks
- (c) Daniel inspects the property on 25th October 2008 and talks to a person he finds there. The person tells him that the vendor gave him a Tenancy Agreement for Six months starting 1st August 2008 and he has already paid the monthly rental for the entire period amounting to Kshs. 600,000/=.
3 marks
- (d) The vendor is ultimately unable to complete on the 30th October 2008 even after appropriating the 20% deposit and Daniel wants you to serve a Notice to complete upon the vendor requiring completion within Seven 7 days after Service of the Notice.
7 marks
5. Bilu Bank Limited (BBL) has agreed to lend to Mr. Erick Koech a sum of Kshs.1,000,000/=. This amount is to be secured by a first legal charge for the same amount over land title No. Kericho Municipality/ Block 4/0666 owned by Mr. Koech and held on a leasehold interest for the period of 99 years from the Municipal Council of Kericho. The title is registered under the Registered Land Act (Cap 300) Laws of Kenya. The property is currently charged to Coffetta Packers Limited. The sum of Kshs.200,000/= is outstanding on an initial loan. Mr. Koech instructs you to act on his behalf.
- (a) What information do you require to enable you assist him?
4 marks
- (b) What documents will you require to obtain on behalf of Mr. Koech in order to assist Bilu Bank Advocates complete the securitization process?
5 marks
- (c) Explain briefly how the Mr. Koech would actually be able to go ahead with the proposed borrowing assuming Coffetta Packers Limited refuse to consent to the second borrowing.
6 marks

COUNCIL OF LEGAL EDUCATION
EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

JUNE 2008

CONVEYANCING

Instructions:

- (A) Answer QUESTION 1 and ANY OTHER TWO QUESTIONS
 - (b) QUESTION ONE is COMPULSORY and carries 20 marks.
 - (c) All other questions carry 15 marks EACH
 - (d) Marks may be lost for illegibility.
 - (e) Two (2) Hours are allowed.
-

1. (a) A formal contract for the sale of land will generally be divided into two parts; (I) Particulars of sale
(II) Conditions of sale
- (i) Discuss briefly some of the *fundamental particulars of a contract* for the sale of land. *(5 marks)*
- (ii) Discuss briefly some of the *conditions of sale* that would be included in a contract for the sale of land *(5 marks)*
- (b) In a contract for the sale and purchase of land, the vendor is under no obligation to disclose patent defects or such burdens or defects as arise from ordinary law. Discuss. *(2 marks)*
- (c) In conveyancing contracts, the date of completion of the contract is regarded as of the essence of the contract. Explain briefly what you understand completion of the contract to entail in terms of the vendor's and purchaser's obligations. *(8 marks)*
2. (a) Explain the difference between the following:
- (i) General Power of Attorney and Special Power of Attorney *(2 marks)*
- (ii) Charge and Mortgage *(2 marks)*
- (iii) Assents and Vested Orders *(2 marks)*

(b) Ketho Finance Company Limited (KFCK) has agreed to lend Kwalo Limited a sum of Kshs.1,000,000/=. This amount is to be secured by a first legal charge over the freehold property known as L.R. No. 36/37 owned by Mr & Mrs. Kwalo. (KFCK) also require a collateral Charge over Title Number Nairobi/Block 666/666 which is owned by Kwalo's son John and held on a leasehold interest from the Nairobi City Council for the residue of 66 years. Property No. L.R. 36/37 is registered under the Government Lands Act but is currently charged to John's employer Tonto Limited to secure a furniture loan of Kshs. 150,000/=. Tonto Limited is willing to reschedule John's loan as an unsecured loan.

KCFCK instructs you to perfect the security.

- (i) What information do you require to enable you prepare the security documents? **(4 marks)**
 - (ii) What steps will you take in preparation and registration of the security documents? **(5 marks)**
3. (a) The provisions of the Companies Act Cap 486 do not apply to the Corporation created under Section 17 of the Sectional Properties Act 1987. Explain. **(3 marks)**
- (b) What documents must be delivered to a purchaser buying a unit registered under the Sectional Properties Act prior to the execution of the purchase agreement? **(5 marks)**
- (c) Discuss and distinguish briefly the restrictions under the Sectional Properties Act 1987 regarding appropriation of purchasers' deposits for construction by developers as opposed to the general practice under the subleases regime. **(7 marks)**
4. (a) Where would you find the following registries?
- (i) Registry of Documents **(1 mark)**
 - (ii) Land Titles Registry **(1 mark)**
 - (iii) Government Lands Registry **(1 mark)**
 - (iv) District Land Registries **(1 mark)**
 - (v) Companies Registry **(1 mark)**
- (b) In what ways does an RLA certificate of official search differ from RTA or GLA official search results? **(2 marks)**
- (c) Land survey constitutes an important pre-contract step and no diligent conveyancer should ignore it or omit it in her/his due diligence endeavors, preceding the actual execution of the contract. Explain why? **(8 marks)**

5. Write short notes of the following:

(i) Possession before completion as provided in clause 6 of the LSK conditions of Sale (1989) Edition. **(3 marks)**

(ii) Apportionment of income and outgoings under clause 7 of the LSK conditions of sale (1989) Edition. **(3 marks)**

(iii) Subdivision under clause 17 of the LSK conditions of sale (1989) Edition. **(3 marks)**

(iv)

- What is "change of user of land"?
- What circumstances may require a land owner to apply for change of user?
- Which particular professionals apply for change of user?
- Who grants change of user?

(6 marks)

6. You are acting for Mr. Koagia, the registered owner of all that leasehold title from the Government of Kenya known as Land Reference Number 2/123 situate in the City of Nairobi on which has been erected a dwelling house. The land is registered under the Registration of Titles Act. Mr. Koagia charged the property to Barclays Bank of Kenya Limited to secure the repayment of Kshs.2,500,000/=. He has erected thereon a dwelling house which he wished to lease to Mr. Otieno for 3 years.

(a) What consents shall be required for the registration of this lease? **(2 Marks)**

(b) State any three implied covenants in such leases. **(3 Marks)**

(c) Outline your duties as the Lessor's Advocate in the process of perfecting the Lease. **(10 Marks)**
