

COUNCIL OF LEGAL EDUCATION.



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

ATP 107: CONVEYANCING.

WEDNESDAY 22ND NOVEMBER 2017.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Five 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

Your client Haraka comes to your chambers. He tells you that he has identified a property on the outskirts of Thika Town, which he intends to acquire for purposes of developing flats for sale to the public. He gives you a copy of a Certificate of Lease in which you note the following:

- (i) The property is Thika Municipality/Block10/3030.
- (ii) The tenure is leasehold for 99 years from 1st January 1985.
- (iii) The user on the title is indicated as "Light Inoffensive Industries with Ancillary Offices".
- (iv) Land rent is Kshs.282 (revisable).
- (v) Size of property is 0.1000 Ha.

Haraka seeks your advice on:

- (a) The purchase of the property. In this regard, Haraka advises that the purchase price has been agreed upon at Kshs.10 million of which he has 20% available in cash and balance will be financed by XYZ Bank Limited. Advise Haraka on:
 - (i) The necessary investigations of Title and Pre-Contract Inquiries that you propose to undertake, their implications in law and on the purchase process. **(6 marks)**
 - (ii) The financing process by XYZ Bank. He specifically wants to know what the process entails and the legal steps involved for the bank to pay the money necessary to complete the sale. He has confirmed to you that he intends to use the property under purchase as security for the borrowing. **(4 marks)**
 - (iii) What are the steps involved and the documents to be prepared to take the process of purchase through? In this regard, he also wants to know the importance and the legal implications of each step and document. **(4 marks)**
- (b) Although Haraka has not acquired the property yet, he is anxious to start the planning process for the development of the apartments. He therefore seeks to know:
 - (i) The nature of title/interest that the purchasers of the apartments would acquire under the Land Act, 2012. He specifically asks how projects of this nature are legally structured considering that the parcel is too small to subdivide and the units are apartments anyway. **(3 marks)**
 - (ii) He also wants to know the necessary planning permissions required and their implications in law. **(3 marks)**

QUESTION TWO

You are acting for Mr. and Mrs. Derrick in the purchase of their first residential property in their rural home in Kericho County. The property costs Kshs.2,000,000 and their vendor insists that he needs a deposit of 10%. The couple has come to your office and they want to understand these two concepts of Stamp Duty and Deposits before committing themselves to the transaction.

- (a) Advise Mr. and Mrs. Derrick on the consequences of stamp duty in the above transaction. (3 marks)
- (b) What steps will you take to ensure that stamp duty is duly paid in the above transaction? (5 marks)
- (c) Advise on the purpose of "Deposits" in a conveyancing transaction. (2 marks)

QUESTION THREE

- (i) Don, your friend and colleague was acting for Leban a Seychelles national who was introduced to him by a mutual acquaintance.
- (ii) Leban indicated that he was the only son of one of the wealthiest families in Seychelles who are big in tourism and mining. That due to limitations of investment opportunities in Seychelles, he was now looking for opportunities in property development in Kenya and was doing a test run with a small purchase of Kshs.50 million.
- (iii) Leban told Don that he will arrange for Don and his wife to visit Seychelles on a fully paid one week holiday where Don can also meet Leban's family.
- (iv) In the meantime, the transaction where Leban was purchasing property commenced. He was to pay 10% deposit but asked Don to negotiate and have the entire purchase price paid on completion.
- (v) Since the vendor had negotiated a 'good' price with Leban he agreed. The sale agreement was signed and the vendor's advocate asked Don to provide a professional undertaking in the usual terms.
- (vi) Don asked Leban to deposit the Kshs.50 million in his client's account and Leban promised to do so next day. However three (3) days later Leban came with a bank remittance slip showing the money had been deposited in the bank but indicated that there was a small hiccup that since the Kenya Central Bank had queried the source and purpose of funds, he would clear the misunderstanding the following day. Leban verbally requested Don to issue the professional undertaking as the funds would be in his account the next day. Eager to please his new client, Don did so.
- (vii) Don then received the completion documents and quickly obtained registration of the transfer. On the advice of Leban, again Don was convinced to release the original Title Deed now in Leban's name to Leban ostensibly as proof of the transaction to Central Bank of Kenya to facilitate release of the money.
- (viii) It has been a month since. Leban now is not taking Don's calls. The vendor's Advocates have now issued a demand to Don to either return the completion documents in their original state or pay Kshs.50 million in seven days or risk a suit.

Don does not even have money to pay his house rent and desperately seeks your advice.

- (a) Analyze and discuss the procedure applicable to the issuance of Professional Undertakings in a sale similar to the one above. (3 marks)

- (b) Discuss what Don may or may not have done correctly in handling the above transaction. (2 marks)
- (c) Don now seeks your advice on what he should do to remedy the situation. (3 marks)
- (d) You have noted that the Professional Undertaking while on the letterhead of Don's law firm, was actually signed by Don's law clerk who only holds a diploma in Para-Legal studies.

Advise Don on the legal implication of the signature. (2 marks)

QUESTION FOUR

Your client Kanyari owns a huge godown in Industrial Area, Nairobi and the same is situated on a very busy street which over time has acquired the reputation of the "go-to place" for spare parts shoppers. Consequently, most property owners have converted their premises into small shops which cumulatively are fetching more than double the rent when compared with letting out the entire godown. Your client shows a plan used by his neighbour who has converted his godown into 20 small but very smart shops. He wants to similarly convert his but has encountered difficulties as follows:

- (i) Two years ago, Kanyari had entered into a ten (10) year lease with Coman Manufacturing Limited. Due to a glut in the commercial rental property market Kanyari feels he sold himself short by failing to negotiate proper rental increments.
- (ii) Coman Manufacturing Ltd. defaulted in the payment of rent for the 1st year of lease but after discussions, it was agreed via email that they would clear the arrears over 1½ years which they have done in the 2nd year of lease but still have arrears to clear over the next six months as agreed.
- (iii) Kanyari has approached Coman Manufacturing Ltd. with a verbal proposal to terminate the lease but Coman's principal director said they had every intention to stay put over the life of the lease.

Kanyari is depressed at the thought of missing out on the new business opportunity which is complicated by the lack of rental increments in the lease and seeks your advice.

- (a) You have asked Kanyari to avail a copy of the lease document for your perusal and advise which he has done. As you go through the document, what are the essential provisions/items you will be looking for and what are their legal implication for Kanyari either way in light of the statutory provisions of the Land Act, 2012 and the Land Registration Act, 2012. (5 marks)
- (b) What is the legal implication of the rent default by Coman Manufacturing in the 1st year as detailed above? Does the agreement to clear arrears over 1½ years change the legal position? Discuss. (5 marks)

QUESTION FIVE

Wilberforce is the proprietor of a one-acre piece of land located in Runda Estate, Nairobi City County. He intends to sell the piece of land to any willing buyer at Kshs.50,000,000. Mr. Mboya is interested in buying the piece of land and has approached you to advise him and represent him in the whole transaction. In the course of negotiations, it becomes clear to you that Wilberforce lost the Original Certificate of Title as he was moving houses. He intends to replace the same before the transaction is completed.

- (a) Discuss the steps you will follow in ensuring that Mr. Mboya acquires a clean title to the land. (5 marks)
- (b) What information will you seek from Mr. Mboya during the initial client interview? (2 marks)
- (c) What steps will Wilberforce follow to ensure that he finds a duplicate of the Certificate of Title? (2 marks)
- (d) Calculate the stamp duty payable in the above sale. (1 marks)

QUESTION SIX

Your client Joshua owns 30 acres of land in Kiminini Area of Trans Nzoia County. The land is registered under the Registration of Titles Act as LR 367018. The tenure is leasehold for 99 years from 1985. Land rent is Kshs.1000 (revisable). Joshua wants to sell the property and has called into your chambers for advice. The following are his queries:

- (a) In which registry is the land registered? Where can he advise the purchaser to effect the search? While you give the answer, he seeks from you a brief explanation of the particular system of registration applicable under this statute with respect to the registries. (3 marks)
- (b) What clearance and consents are necessary in the sale transaction? Where are they to be procured and why? (5 marks)
- (c) Your client discovers that the purchaser is a Chinese national who wants to grow a special kind of spinach called Pak choi on the land. He wants to know whether this has any legal implications on the transaction. (2 marks)

END

