



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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**SPECIAL/SUPPLEMENTARY EXAMINATION**

Telephone: 891601-6

**MAY – AUGUST 2021**

Ext 1022/23/25

**FACULTY OF LAW**

**REGULAR PROGRAMME**

**CLS 225: PROPRIETARY TRANSACTIONS IN LAND**

**Date: AUGUST 2021**

**Duration: 2 Hours**

**INSTRUCTIONS: Answer Question ONE and any other TWO Questions**

- Q1) Mr **Giuseppe Borlini** was a wealthy Kenyan of Italian descent. He came to Kenya in 1970 at the tender age of twenty years as a tourist who only sought to sample Kenya's warm sandy beaches during the European Winter season. Other than Kenya, Borlini's tropical tour also took him to a number of other African countries including South Africa, Tanzania, Madagascar and the Reunion Islands. When he returned to Italy, he married his longtime sweetheart Italian beauty queen from Turin, **Patricia**. His love for Kenya's weather and its people however had a stronger hold on him to the extent that he decided to relocate to Kenyan Coast of Malindi with his family in 1980. While staying there, he acquired interests in land by purchasing several tracts of land along the ten-mile Coastal Strip. In 2003, Borlini's union with Patricia was dissolved and Patricia decided to relocate back to Italy. Borlini chose not to remarry and instead, kept a host of concubines whom he treated lavishly from the largesse of his material acquisitions. One of his most favourite concubines was one **Ms Juliet Umaka**. On 20 September 2015, Borlini went out alone for an afternoon swimming session whereupon he drowned due to Indian Ocean's strong tides which swept him into the deeper end of the ocean. After his burial, it was discovered that Borlini had bequeathed one of his prime properties sandwiched between Malindi Airport and the beach to Ms Umaka. The Property was registered as **CR 2419/MALINDI**. The property, which measures 3.0 acres had three residential apartments on it, with each apartment consisting of six family units. The bequest was not contested at all by Borlini's surviving relatives and Mr. Maldini, Borlini's Executor, transferred it to Juliet without any hitches at all. After the transfer, Juliet sought to subdivide the property into three equal plots under separate titles. She intended to retain one title to herself, the second one to be transferred to her

mother, **Mrs Jennifer Umaka**, and the third one to be transferred to **MAMA MWEMA CHILDREN'S HOME**. Both properties transferred to Mrs Umaka and the Children's Home were made as gifts *inter-vivos*. Exactly one year after Mr Borlini's death, Juliet passed on from cardiac arrest. Mrs Umaka has paid a visit to the **Law Firm of M/S Mwerevu & Associates Advocates** where you were recently admitted in for the Pupillage programme. Mr. Mwerevu has tasked you to do a legal opinion for his review with a view to briefing Mrs. Umaka during a scheduled client visit. The brief requires you to offer a concise legal opinion addressing the following issues;

- a) Under what legislative regime was the land along the ten-mile Coastal Strip registered prior to May 2012? Explain the necessity that informed the enactment of the said legislation **(4 marks)**
- b) What kind of tenure was conferred through the registration regime identified in 1(a) above? **(2 marks)**
- c) Suppose Mr. Borlini had not taken up Kenyan citizenship by the time of his death, what effect would the Constitution of Kenya 2010 have had on his tenure over the tenure he held over his pieces of land at the Coast by the time of his death? Explain. **(4 marks)**
- d) What Conveyance would be used to transfer Borlini's interest in the property to Juliet? **(1 mark)**
- e) How would the interest passed to Juliet through 1(d) above be registrable? **(2 marks)**
- f) What Consents did Juliet require in order to subdivide the land into the three separate parcels as she had intended? Explain your answer **(4 marks)**
- g) After Juliet's death, Mrs. Umaka sought to create a leasehold interest over the two properties.
  - i) Explain what is meant by a lease **(2 marks)**
  - ii) Identify and explain the various steps of how the intended lease would be created and secured **(5 marks)**
- h) Suppose the monthly rent for each unit is Kshs 80,000/=, calculate the Stamp Duty payable for the two apartments given that Mrs. Umaka seeks to create a six-year lease over the property **(4 marks)**

**Q2)**

- a) Identify and explain any two differences between a "Lease" and "Licence" **(4 marks)**
- b) Write short but concise notes to explain the following types of leases;
  - i) Tenancy at sufferance **(2 marks)**

- ii) Periodic tenancy (2 marks)
- iii) Reversionary Lease (2 marks)
- c) Identify and explain any five ways through which a Lease could be terminated (10 marks)

**Q3)** You have recently been instructed by a family of a famous private developer which intends to buy some one hundred acres of prime land for agricultural purposes from Mr. Bila Shamba. The family requires you to assist them with the acquisition of interest in the property. Give a detailed outline of how you will attend to your client's instructions, taking account to clearly demonstrate your roles in the said transaction as fully as possible. (20 marks)

- Q4)**
- a) Distinguish between a Charge and Discharge of Charge as **Conveyances** (3 marks)
  - b) Identify and explain any five responsibilities of a Chargee's advocate in Charge transaction (5 marks)
  - c) Explain the difference between a Chargee's right to Tack *vis-à-vis* the right to Consolidate under sections 82 and 83, respectively, of the Land Act No. 6 of 2012 (4 marks)
  - d) Give and explain any four Covenants that the chargor makes in a Charge transaction (4 marks)
  - e) Identify and explain any two remedies available to a Chargee in a Charge relationship (4 marks)

**Q5)** Immediately after her appointment by President Uhuru Kenyatta to be the Cabinet Secretary for Lands, Ms. Farida Karoney embarked on various initiatives at her new Ministry in order to resuscitate the beleaguered Ministry which is often described as the bastion of corruption in Kenya. Key among the new CS's proposals was the concept of digitisation of land transactions, otherwise known as, e-Conveyancing. The Law Society of Kenya voiced its strong opposition against this proposal and even proceeded to court for Conservatory Orders against the CS and the Ministry seeking to stay the said process. Borrowing from the best practices from other jurisdiction, discuss and proffer arguments both for and against e-Conveyancing within the context of Kenya's real property market transactions, giving your views on whether it is presently ripe or not. (20 marks)

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