



THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

A. M. E. C. E. A

P.O. Box 62157
00200 Nairobi - KENYA
Telephone: 891601-6
Fax: 254-20-891084
E-mail: academics@cuea.edu

MAIN EXAMINATION

JANUARY – APRIL 2014 TRIMESTER

FACULTY OF LAW

REGULAR PROGRAMME

CLS 208: EQUITY AND TRUST LAW

Date: APRIL 2014

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions

Q1. Mr. Landy Lody owns a godown occupying a 2 acre parcel of land on Enterprise Road in Nairobi's industrial area. He has expressed a desire to lease it out. Mr. Bizy Bodi, a manufacturer of sports shoes, is interested in leasing the godown for a period of ten years. Mr. Lody and Mr. Bodi enter into an agreement for the lease of the godown. A lease agreement is drawn up and executed by the parties, but the same is not registered as required under Kenyan law.

It is a term of the lease agreement that while rent is payable quarterly in advance, in the event of default in payment of rent Mr. Lody is at liberty to demand payment of rent yearly (annually) in advance.

Bizy Bodi pays rent quarterly in advance for the first one year but in the second year he falls into arrears (default) upon which Landy Lody proceeds to demand a year's rent in advance. Bizy Bodi fails to pay the advance rent demanded. Mr. Lody proceeds to distrain for rent, thereby incapacitating Mr. Bodi's manufacturing operations

Bizy Bodi institutes legal proceedings for illegal distress against Mr. Lody seeking primarily damages for illegal distress and injunctive reliefs.

Note that under Kenyan law, where a lease deed is not registered, the lease becomes a periodic tenancy, for which tenancy rent is payable monthly in advance. Note, also, that Bizy Bodi was the one charged with the responsibility of registration of the lease deed, but he failed, refused or neglected to do so.

Highlight the salient features of the historical development of equity, and the various maxims, that would have a bearing on the case and render your decision as appertains to the case. **(30 marks)**

Q2. Examine the factors that influence the award of the reliefs of:

- a) Rectification **(10 marks)**
- b) Restitution **(10 marks)**

Q3. a) Discuss the case of *Giella vs Cassman Brown and Company Ltd* (1973) E. A. in the context of the grounds upon which the relief sought in that case may be granted. **(10 marks)**

- b) What is an Anton Pillar order, and upon what grounds will it be granted or denied? **(10 marks)**

Q4. Explain the concepts of mistake, misrepresentation, fraud and undue influence, and the impact that equity has had in shaping them. **(20 marks)**

Q5. With the use of case law, discuss the defences to an application made for an order of specific performance. **(20 marks)**

END