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MAIN EXAMINATION

AUGUST – DECEMBER 2018 TRIMESTER

FACULTY OF LAW

SPECIAL / SUPPLEMENTARY EXAMINATION

CLS 207: CIVIL PROCEDURE

Date: SEPTEMBER 2018	**Duration: 2 Hours**
INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions	

Q1. Mr. Githu Richards a buiseness man, with property in Ongata Rongai, bought the property from a housing scheme which allotted him a plot. His neighbour, Miss. Mwenda, while her husband was alive, was also allotted a plot nearby. MrGithu's plot was plot number 600 while Miss Mwende's was 586. While she was away and after the death of her husband, a local Vigilante forcibly built on plot her plot so when she came back and realized that her plot was built upon, trespassed upon plot 600 which was vacant and built a small temporary structure on it and rented it out to a certain religious congregation known as The Temple of Jesus. As part of his plan, Mr Githu got a loan and wanted to build on his plot only to come and find a temporary structure used by the said church. On inquiring, Reverend Jude, indicated that he does not want any trouble and knows that he has been paying rent for the last three years to Miss. Mwende and that he is ready to vacate when the rightful owner tells him to do so. Mr. Githu has reported this matter to police and chief of the area and Miss. Mwende has been summoned to the police station and when she went, was told to vacate as she could not show proof of ownership. Mr. Githu has proof of ownership and a map showing that Miss. Mwende is the owner of plot no 586.

a) Your Pupil master has given you this brief and wants you to write a legal opinion for his use. Write a legal opinion which he will need to assist MrGithu. **(5 Marks)**

b) Which pleading have you advised your pupil master in the above opinion? **(2 Marks)**

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c) Your Pupil master indicated that the client Mr Githu needs the court to urgently give a solution. Draft the pleadings knowing the urgency of the matter at hand. **(15 Marks)**

d) Briefly describe the various types of injunctions. **(8 Marks)**

Q2. **Order 53** on judicial review has a new substantive input through **the Fair Administrative Actions Act no 4 of 2015**. Discuss this input and how the Act changes the jurisprudence of JR. **(20 Marks)**

Q3. **Order 46** on court supervised arbitration and ADR brings out the importance of out of court settlement. Explain the main differences between order 46 and arbitration under **Arbitration Act 1995**briefly giving advantages of arbitration over court litigation. **(20 Marks)**

Q4. ***Giella vs Casman Brown*** is a land mark case which brings out the principles of injunctions. By referring to this case and any other case, explain how courts are guided by these principles in deciding whether or not to grant an order for injunction. **(20 Marks)**

Q5. Explain in detail the differences between appeal and review. **(20 Marks)**

END

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