



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

**A. M. E. C. E. A**  
**MAIN EXAMINATION**

**AUGUST – DECEMBER 2018 TRIMESTER**

**FACULTY OF LAW**

**REGULAR / EVENING PROGRAMME**

**CLS 225: PROPRIETARY TRANSACTIONS IN LAND**

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

**Date: DECEMBER 2018**

**Duration: 2 Hours**

**INSTRUCTIONS: Answer Question ONE and ANY OTHER TWO Questions**

Q1. Mr Kachero and his family have recently bought a three acre piece of land for Kenya shillings one hundred forty five million (Kshs 145,000,000/=) only, which was then registered in his family's favour at Nairobi as **MIHANG'O/UTAWALA/20119**. The family intends to put up five apartment blocks and a Maisonette for its occupation. Each of the five apartment blocks is to consist of six-two-bed-roomed units. The family intends to lease out all the five apartment blocks to a college which needs them for accommodation to their students for a period of ten years. The monthly rent for each two-bedroomed unit is Kenya shillings twenty thousand (Kshs 20,000/-) only. The projected cost for the proposed development is Kenya shillings two hundred million (Kshs 200,000,000/=) only, of which the family already has half the amount. Meanwhile, Mr Kachero's ultimate development plan is to sub-divide the plot later on into six half-acre plots and have each of the six developments to sit on their own registered parcels. The family has approached Mali Mingi Development Bank to help finance the project shortfall, which request has tentatively been acceded to by the Bank on condition that the family offers the title of the land in question as security for the loan to be advanced. The Bank has instructed Akili Nyingi & Associates Advocates where you are presently interning at. Mr Akili Nyingi, the Managing Partner of the firm, hands over the file to you with instructions that you provide him with concise legal advice on the following issues sought by the Bank;

- a) How much amount would need to be secured by the title to the property?  
Explain **(2 marks)**

- b) What would be the appropriate instrument to entrench the Bank's interest in Mr Kachero's land? **(2 marks)**
- c) Identify and explain any three Covenants that Mr. Kachero would have to agree to be bound to in his proposed transaction with the Bank **(6 marks)**
- d) How much Stamp Duty would the amount advanced by the Bank attract? Clearly show your workings. **(3 marks)**
- e) Which party would be liable to pay the Stamp Duty payable in (d) above, explain **(3 marks)**
- f) What requirements would Mr. Kachero's family need to meet in order to use the land as security for the loan, and also sub-divide the land? **(3 marks)**
- g) Calculate the Stamp Duty payable for the transaction involving the leasing out of the five apartment blocks to the college **(5 marks)**
- h) What Conveyance would need to be used to re-transfer the interest in the land back to Mr. Kachero upon completion of repayment of the loan and interest? **(2 marks)**
- i) Calculate the amount of Stamp Duty that would be attracted by the above instrument **(3 marks)**
- j) Give any four duties of a lender's advocate during a Conveyancing transaction **(4 marks)**
- Q2. a) Name and explain the five stages of a Conveyance transaction **(10 marks)**
- b) Explain what is meant by a Power of Attorney and the circumstances in which it is used in the execution of instruments **(4 marks)**
- c) Explain the relevance of section 3 of the Law of Contract Act, Chapter 23 Laws of Kenya, as read together with sections 44 and 45 of the Land Registration Act, Act No. 3 of 2012, to Conveyancing transactions **(6 marks)**
- Q3. Citing the relevant provisions of the law, discuss the five key requirements of a Conveyancing transaction **(20 marks)**

- Q4. a) Identify and explain any five rules used in construing Conveyancing documents **(10 marks)**
- b) Name the five key ingredients of a Conveyancing transaction **(5 marks)**
- c) i) What is Capital Gains Tax? **(2 marks)**  
ii) Giving justifications, discuss whether Capital Gains Tax is tax is relevant to Conveyancing or not? **(3 marks)**
- Q5. You are presently interning at the Wakili Shupavu Advocates where the Senior Partner, Mr. Akili Shupavu has recently been appointed to serve in a taskforce whose terms of reference are to identify the most critical challenges affecting Conveyancing Law and Practice in Kenya, and to propose possible reforms that would help in streamlining Conveyancing practice. Mr. Shupavu has picked you to assist him with the legal research for the big assignment. You are therefore required to prepare a draft write-up to deal with the brief for Mr. Shupavu's consideration, and possible adoption. **(20 marks)**

**\*END\***