



# THE CATHOLIC UNIVERSITY OF EASTERN AFRICA

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**MAIN EXAMINATION**

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**SEPTEMBER –DECEMBER 2021**

**FACULTY OF LAW**

**REGULAR PROGRAMME**

**CLS 225: PROPRIETARY TRANSACTIONS IN LAND**

**Date: DECEMBER 2021**

**Duration: 2 Hours**

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

Q1. Mama Miradi and her family have recently bought a six acre piece of land for Kenya shillings two hundred million (Kshs 200,000,000/=) only, which was then registered in her family's favour at Eldoret Lands Registry as KAPSERET/KAPSERET/4226. The family intends to put up ten apartment blocks onto five acres and a Maisonette onto the remaining one acre for its occupation. Each of the ten apartment blocks is to consist of six-two-bed-roomed units. The family intends to lease out all the ten apartment blocks to Moi University which needs them for accommodation of their members of staff 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 300,000,000/=) only, of which the family already has half the amount. Meanwhile, Mama Miradi's ultimate development plan is to sub-divide their land into twelve half-acre plots with each of the ten apartment blocks occupying its own half-acre plot with the maisonette occupying two half-acre plots. The family has approached Mali Mingi Development Bank to help finance the project development for the balance of the amount required. The Bank has in principle agreed provide the balance shortfall subject to an agreement on the terms and conditions, including having title of the land in question being deposited as security for the loan to be advanced. The Bank has instructed Wakili Shupavu & Associates Advocates, where you are presently interning at, to represent them in the proposed transaction. Mr Wakili Shupavu, 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. In the meantime, Mama Miradi has had to travel out of the country for an extended business trip to Australia and New Zealand. He however wishes to have the transaction proceed in his absence.

- a) Explain to Mama Miradi how she would ensure that the Conveyancing transactions proceed even in her absence during her stay in Australia and New Zealand? Explain **(3 marks)**
- b) What would be the appropriate instrument to entrench the Bank's interest in Mama Miradi's land? Explain **(3 marks)**
- c) What is the nature of the Bank's interest in Mama Miradi's land? **(2 marks)**
- d) Identify and explain any five covenants that Mama Miradi would have to agree to be bound to in her proposed transaction with the Bank **(5 marks)**
- e) What requirements would Mama Miradi's family need to meet in order to use the land as security for the loan, and also sub-divide the land? **(3 marks)**
- f) Calculate the Stamp Duty payable for the transaction involving the leasing out of the five apartment blocks to Moi University **(5 marks).**
- g) What Conveyance would need to be used to re-transfer the interest in the land back to Mama Miradi upon completion of repayment of the loan and interest? Explain **(3 marks)**
- h) Give and explain any six duties of a lender's advocate during a Conveyancing transaction **(6 marks).**

Q2. 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)**

Q3. (a) Explain any three distinguishing features of a lease **(6 marks)**

- (b) Discuss the relationship(s) between leases and licences **(6 marks)**
- (c) Identify and explain any four covenants that are implied in leases for;
  - (i) Tenant **(4 marks)**
  - (ii) Landlord **(4 marks)**

Q4. 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)**

Q5. You have recently been employed as an associate advocate at a law firm where the Senior Partner, Mr. Bwana Wakili, has been appointed to serve in a taskforce whose terms of reference require them 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. Bwana Wakili has tasked you to undertake preliminary research and a write-up for this most important task. Prepare the draft report to deal with the task at hand for Mr Bwana Wakili. **(20 marks)**

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