



NIGERIAN LAW SCHOOL

BWARI - ABUJA

BAR EXAMINATION-PART II FINAL

PROPERTY LAW PRACTICE

MONDAY 13TH JANUARY, 2020

TIME ALLOWED: 3 HOURS

INSTRUCTIONS:

THIS PAPER IS DIVIDED INTO TWO SECTIONS. TWO ANSWER BOOKLETS ARE PROVIDED. QUESTIONS FROM EACH SECTION SHOULD BE ANSWERED ON A SEPARATE ANSWER BOOKLET. QUESTIONS 1 AND 4 ARE COMPULSORY. ONE OTHER QUESTION FROM EACH SECTION SHOULD BE ATTEMPTED.

WRITE YOUR EXAMINATION NUMBER ON EACH ANSWER BOOKLET.

SECTION A

QUESTION 1 (COMPULSORY)

Crystaland Hotels Limited of Plot 518, Adeola Odekun Street, Victoria Island, Lagos, took possession of Plot 518, Adeola Odekun Street for 10 years. The lease between Crystaland Hotels Limited and the owner of the property Otunba Jude Egware of No. 258 Obalende, Lagos contains amongst others the following clauses:

(a) The Lessor shall on the written request of the lessee made at least 3 months before the expiration of the current term, grant to the lessee the demised premises for another term of 10 years on the same terms and conditions (except the rent Clause) as tvid lease.

(b) The lessor shall on the Lessee exercising the option in Clause (a) grant the new term at a 20% increase in rent.

(c) Tge lessee covenants with the lessor not to assign, sublet or part with the demised premises without the written consent of the lessor .

(d) The lessor shall use the demised premises for Hotel business only.

The lease will expire on 31st May 2020. On 5th January, 2020, Cryststaland Hotel Limited, instructed its lawyer, Udezi Ovia of Udezi & Associates of No. 212, Maryland, Lagos, to write a letter to Otunba Jude Egware of the Hotels' desire to renegotiate Clause (b) because in view of the present economic down turn the 20% increase in the rent is not feasible.

Assuming you are Udezi Ovia:

(a) Prepare the letter to be sent to Otunba Hide Egware based on the instructions you have received.

(b) Advise Cystaland Hotels Limited on the implication of its request for a re-negotiation of Clause (B) on its exercise of the option in Clause (A).

(c) Comment on the disadvantage of Clause (A) as drafted in the Lease.

(d) Redraft Clause (A) in keeping with the essential elements of a valid Lease.

(e) Advise Cryststland Hotels Limited on the effects of Clause (C) and (D) on its interest as a lessee.

(f) Offer a redraft of Clause (C) and (D) taking into consideration the interest of your client.

(g) State the grounds (if any) under which Otunba Hide Egware can reasonably refuse or withhold consent assuming Cryststaland Hotels Limited desires to sublet the property.

QUESTION 2

Mr. Williams Johnson of 22, Dove Street, Ilesamaja, Ogun State purchased ten flats of three bedrooms each from the estate of Mr. Dorsu Moses who died intestate in 1990. Mr. Johnson paid the sum of N500,000.00 (Five Hundred Naira) as part payment for the property the balance being the sum of N3,000,000.00 (Three Million Naira). A receipt was issued to Mr. Johnson for the part payment paid.

The administrators of the estate of Mr. Moses repeatedly demanded for tgr payment of the balance of the said amount from Mr. Johnson but he refused to pay the balance.

Four years after the part payment was made, the property was sold to University of Lagos by the administrators of the estate at the rate of N10,000,000.00(Ten Million Naira) only and a document was executed and registered evidencing the said transaction.

Mr. Johnson who has been using the said property as the head office of Showmanship Company Limited was instructed to evacuate the premises by Solicitors of University of Lagos. Mr Johnson is infuriated and agitated.

Answer the following questions:

- (a) Comment on the validity or otherwise of the sale of the property to University of Lagos.
- (b) Draft the concluding part of the final document to be executed in respect of the sale to University of Lagos.
- (c) Comment on the relevance or otherwise of University of Lagos registering the document of transfer in respect of the above transaction.
- (d) Outline the capacity and status of all the parties in the above transaction.
- (e) Comment on 5 features of the type of sale of land transaction between Mr. Johnson and the Administrators of the estate of Mr. Moses.
- (f) Advise University of Lagos on the qualities of a good root of title.

(g) Enumerate the types of rents and outline the difference between "a rent review" clause and an "option to renew " clause.

QUESTION 3

Sir Dadinkowa Okafor, a resident of Lagos and former Director at NITEL Plc, has some real properties in Lagos and Aba. One of the properties in Lagos is situate at Plot 19, Morokay Avenue, Ikeja Lagos and covered by a Certificate of Occupancy registered as 22/22/2002 at the Lagos Lands registry. The property was at foundation stage when he left the services of NITEL in 2007. In June 2009, he obtained a loan of N35 million from Diamond Bank Plc for the purpose of completing the buildings on the property. The property was used as security for the loan and a deed of legal mortgage was duly executed between Sir Dadinkowa and Diamond Bank Plc. On April 1, 2011, Sir Dadinkowa gave instructions to his Lawyer, Dr. Alake Mariam, SAN, to prepare his will. His instructions were perfected after the payment of professional fee of N465,000.00.

On his visit to Kaduna recently to attend a meeting of his professional body, Sir Dadinkowa was killed in a car accident.

Answer the following questions

(i) Assuming Sir Dadinkowa created a term of years in respect of two units of three bedroom flats in favour of Bluewaters Vessels Limited for six years at N5 million per annum for the two flats, draft the commencement, execution and attestation clauses.

(ii) Mention five documents required to perfect the transaction between Sir Dadinkowa and Diamond Bank Plc

Assuming you are Sir Dadinkowa's Lawyer, what procedure would you adopt to recover an outstanding professional fee, if after preparing the Will your fees remained unpaid?

(i) Draft the commencement and testimonium clauses of Sir Dadinkowa's Will:

(ii) Set out, in the correct order, steps for perfection of the transaction between Sir Dadinkowa and diamond bank Plc.

Dadinkowa's son, David, filed a caveat while a suit challenging the validity of the Will is still pending. Advise the Probate Registrar.

(i) Mention the contents of the account to be filed by the Personal Representative of Sir. Dadinkowa's estate and State the effects of failure to file account.

(ii) Mention five documents required to secure grant of non-contentious probate.

SECTION B

- **PLEASE USE ANOTHER ANSWER BOOKLET FOR THIS SECTION**
- **QUESTION 4 IS COMPULSORY**
- **ONE OTHER QUESTION FROM THIS SECTION SHOULD BE ATTEMPTED**

QUESTION 4 (COMPULSORY)

Upon the demise of his late mother who died testate, Kunle Apex inherited her 3 bedroom bungalow which he leased to Wholesale Nig. Ltd at N120,000 p.a. for seven years. He demanded six years rent in advance, but the lessee paid for only one year. S. K. Joseph, Esq. who had been appointed executor/trustee to the large estate with others acted for the two parties. At the expiration of the lease, the bungalow was sold and title conveyed to the purchaser by an irrevocable Power of Attorney. Meanwhile, Access Bank Plc which had obtained judgement against Kunle's late mother in her lifetime, without trying to execute the judgement simply resorted to its power of sale under the Mortgage Deed. S. K. Joseph, Esq, with the support of his co-executors appointed his law firm as solicitors to the estate.

Answer the following questions with the aid of relevant authorities.

- (a) (i) What would have been the likely effect if Kunle was paid the six years rent he requested for?
- (ii) Would it be right to seek the Governor's consent for the lease transaction? Whose duty between the two parties is it to seek the Governor's consent?

(b) Was it right for title to have been transferred to the purchaser of the bungalow by an irrevocable Power of Attorney? If not what is the proper instrument of Transfer that should have been used.

(c) (i) Draft the Appointment Clause of the irrevocable Power of Attorney referred to in the question.

(ii) Draft the commencement of the proper instrument of transfer.

(d) (i) comment on the validity of the step taken by the bank in selling the property.

(ii) How valid is the appointment of S. K. Joseph, Esq. s law firm as solicitors to the estate of the deceased.

(e) Use the table below to calculate what

S. K. Joseph, Esq is entitled to for acting for the two parties to the lease.

(i) Where the rent does not exceed N100...	N37.50 on the rental
(ii) where the rent exceeds N100 but first does not exceed N1000 rent and respect of each thereof; N37.50 in respect of the N100 of rent N100 of N25 in subsequent N100 of rent or part
(iii) Where the rent exceeds N1000 first each to respect N100 or part	N37.500 in respect of the N100 and N25 in respect of N100 of rent or part thereof up N100 and then N12.50 in of every subsequent thereof.

QUESTION 4B

Don Joseph had always desired to own landed properties in Lagos and Abuja. In 2008, he met Chief Okonedo who owned properties in these two cities and who was willing to sell them. Don Joseph entered into a contract of sale with Chief Okonedo for the purchase of the properties in Lagos, and Abuja. The property in Lagos has a duplex on it, while that of Abuja has a shopping complex. After the

completion of the transaction, Don Joseph decided to raise funds from banks to fund his political ambition. He got the sum of N100 million from First Bank Plc and N200 million from Zenith Bank. He executed two deeds of legal mortgage (One for each loan) using the shopping complex in Abuja as security for the loans. The property in Lagos is located at Ikeja.

Answer the following questions:

- (a) Explain how Chief Okonedo's title to his Abuja property would be deduced.
- (b) How would Chief Okonedo's title to the property in Lagos be investigated by Don Joseph.
- (c) State the modes of creation of legal mortgages in Abuja and advise Don Joseph on whether he could create successive legal mortgage over his property in Abuja.

QUESTION 5A

Tunde Young works at the Nigerian National Petroleum Corporation. He was recently transferred from Abuja to Yenagoa and has contracted to take a lease of No.70, Ox-bow Lake Estate, Yenagoa, Bayelsa State for a term of 72 months. His landlord Mr. Myles Bello of No.20, Agudama Street, Yenagoa sent him this draft agreement for his comment, addition, subtraction and other amendment. Tunde Young has sent you the agreement for the needed amendment to the content and language.

LEASE AGREEMENT

This lease agreement is made this 5th day of May, 2012 between Mr. Myles Bello of No. 20, Law School Drive, Agudama, Yenagoa (hereinafter called the landlord) of the one part and Tunde Young of the Nigerian National Petroleum Corporation, Brass (hereinafter called the tenant) on the other hand.

In consideration of the rent of N600,000 paid to the lease in advance, receipt of which the covenants, conditions, stipulations herein contain the lessor as beneficial owner hereby lets to the tenant ALL THAT property being at and known as No. 70, Ox-Bow Lake Estate together with appurtenances thereto (herein called the house for a term of 72 months from the 12th day of May 2012.

The Tenant Covenants

3. THE LANDLORD COVENANTS

1.

2.

4. In witness WHEREOF:-

The parties have hereto set their hands and names the day and year first above written.

Signed by the Landlord (an illiterate)

.....

In the presence of

Name.....
.....

Address:
.....

.....
.....

Occupation:.....
.....

Signed by the Tenant

IN THE Presence of

Name.....
.....

Address:
.....

.....
.....

Occupation:.....
.....

QUESTION 5B

Chief Eze Osita bought a plot of land from Taraba State Government in 1990 for N50,000. He completed a building consisting a block of 4 flats (3 bedrooms each). He spent N950,000 to complete the project. In 2007 he painted the building himself and paid himself N300,000. Same year he sold the block of flats to Hon. Carol Smith of the House of Representatives for N4,000,000.00. Jones Emeka, Esq., the solicitor handling the sale on behalf of the parties has sent him his professional Bill of N400,000. He also advised Chief Eze Osita to pay his capital gain tax. After assessment of the tax, Chief Eze Osita believing the tax assessment was too high was angry and consequently debriefed him blaming him for what he alleged as an excessive tax assessment. Chief Osita Eze has briefed J. P. Highlander Esq to contest his tax assessment J. P. Highlander Esq has sent him a Bill of N650,000 which he has paid. Compute the Capital Gain Tax.

QUESTION 6

Mr. Kwagie has just returned to Nigerian after spending almost 20 years in Ghana, and almost pennyless. He wants to purchase a property in Ebute-Metta, Lagos, Lagos State but not having the means, he has approached Leadway Bank for a loan of N10,000,000 for which he wants to use the property to be bought as security. He is however, worried about the taxes/fees that he will be required to pay in respect of the property and how he will go about the registration of the property. Shortly after the loan transaction was completed, his nephew Engr. Robosa of No. 4, Agu Street, Surulere, died of kidney failure at the Lagos State University Teaching Hospital on the 25th of April 2011. Mr. Kwagie now wants to apply for for letters of administration in respect of Engr. Robosa's properties since he died intestate. However, the wife of Engr. Robosa who got married to him at the Ikeja Marriage Registry in 1980, protested that she and her children were the ones entitled to apply for letters of administration. Meanwhile, Mr. Kwagie has sold 2 plots belonging to the deceased at Epe village to one Mr. Lukman Ganaja for the sum of N10,000,000 which proceeds he has refused to account for.

- (a) State the various taxes/fees that Mr. Kwagie will need to pay in respect of the property at Ebute-Metta.

- (b) State the procedure for registration of the property at Ebute-Metta
- (c) Between Mr. Kwagie and Mrs. Robosa, who is entitled to the grant of letters of administration? State the statutory order of priority in the present circumstance (use the first four only)
- (i) Comment on the sale of the plot of land at Epe Village by Mr. Kwagie and the implication, if any.
- (ii) Complete the attached form 10A (assuming Mrs. Robosa of No. 15, Rumens Road, Ikoyi is applying for letters of administration).
- (iii) Assuming you acted as Solicitor to Leadway Bank in the mortgage transaction between Mr. Kwagie and the bank, use the scale below to calculate your fees:

IN THE HIGH COURT OF LAGOS STATE

IN THE PROBATE REGISTRY, LAGOS

APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION
(WITHOUT WILL)

IN THE ESTATE OF
(DECEASED)

OTHERWISE.....
.....

I/We,
(1).....of.....
....

(2).....of.....
.....

(3).....of.....
.....

(4).....of.....
.....

Relationship.....
.....

Respectively of the Deceased hereby make application for a grant of Letters of Administration in respect of the Estate of

(late)
of.....
...

Occupation.....who died
at.....

On theday
of.....20.....

2. The Deceased left real and personal property, to the value of All/part of which was situate within the jurisdiction of the High Court of Lagos State Nigeria

3. the inventory which accompanies this application contains particulars of the personal property of which the Deceased died possessed and in respect of which a grant is required.

4. A schedule of debts by the Deceased and Schedule of the Deceased funeral expenses are annexed and marked Parts 1 & II respectively.

5. This application is accompanied by:

Oath of Administration on (without Will)
Administration Bond (without Will)
Declaration as to next of kin For;
Inventory
Schedule of Debts and Funeral Expenses
For R (Particulars of Realty)

Dated this
.....of.....20.....

1.....
.....

2.....

 3.....

 4.....

TRANSACTION CONDUCTED	FOR THE FIRST N100 PER N100	FOR THE 2ND AND 3RD N1000 PER N100	FOR THE 4TH AND SUBSEQUENT N1000 UP TO N20,000 PER N100	FOR THE REMAINDER WITHOUT LIMIT PER N100
MORTGAGEE LEGAL PRACTITIONER FOR INVESTIGATING TITLE TO LEASEHOLD PROPERTY, PREPARING AND COMPLETING MORTGAGE	N22.50K	N22.50K	N11.25K	N2.50K

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NIGERIAN LAW SCHOOL

BWARI-ABUJA

BAR PT 11 EXAMINATION (BACKLOG) JANUARY 2020

PROPERTY LAW PRACTICE

MARKING SCHEME

QUESTION 1

(a)

UDEZI & ASSOCIATES

NO. 212 MARYLAND, LAGOS

Tel. No: 070454545

Email: udezi@yahoo.com

Our Ref.....

Your Ref.....

13th January, 2020

Otunbajide Egware

No. 258, Obalende, Lagos,

Lagos State.

Dear Sir,

**RENEWAL OF LEASE OF PLOT 518, ADEOLA ODEKU STREET, VICTORIA ISLAND,
LAGOS**

We write as solicitors to Crystal and Hotels Limited (our client) in respect of the above.

As you are aware, the current lease will expire on 31st May, 2020. Consequently, our client hereby applies for a renewal of the lease for a further term of 10 years.

However, in view of the economic down turn in the country, we hereby request for a downward review of the 20% increment of rent as contained in the lease agreement to 10% to enable our client pay with ease.

We trust that our request will be favourably considered.

Thank you.

Yours faithfully,

[SIGN]

Udezi Ovia Esq.

Associate

7 MARKS

(b) Clause b of the lease (read together with the option to renew clause) must be accepted by the lessee in its entirety (without any variation). Therefore, the implication of the lessee's request amounts to a counter offer and the option has not been exercised. Thus, the lessor has a right to lease the property to another person and the Lessee cannot maintain an action against him for specific performance. **DAWODU V. ODULAJA; IITA V. KHAWARAN**

3 MARKS

(c) Clause A represents the option to renew clause and a standard clause must exclude the option to renew clause in order not to create a perpetually renewable lease. This was not done in clause A and a perpetually renewable lease has been created. The lease will continually renew itself - **Re Hopkins Lease; North Church Estate Ltd v. Daniels; Stephen Idugboe & Sons Ltd v. Anenih.**

3 MARKS

(d) The lessor covenants with the lessee that upon the lessee's payment of the rent and observing all the terms and covenants in the lease, and upon giving (at least three months) notice before the expiration of the present lease, the lessor shall grant him a further term of (ten years) at a rent to be determined (by the market value/ or by an Arbitrator to be jointly appointed by the parties/ or at an increment not exceeding 20% of the rent) subject to the covenants and terms of this current lease excluding this option to renew.

3 MARKS

(e) The effect of clause C is that it is a conditional bar and the lessee can assign or sublet only with the consent of the lessor and the lessor can unreasonably withhold such consent -**Ideal Firms Renting v. Nelson**.

2 MARKS

The effect of clause D is that the lessee cannot use the parties for any other purposes aside hotel business because it is an absolute bar. Clause D can also make the property less attractive as it cannot be used for any other commercial purpose.

2 MARKS

(f) Clause C will be drafted thus:

The lessee covenants not to assign or sublet or otherwise part with the possession of the property (or any part of it) without the written consent of the lessor, such consent not to be unreasonably withheld in the case of responsible and respectable persons.

2 MARKS

Clause D will be drafted thus:

The lessee covenants to use the premises for commercial purposes only.

1 MARKS

(g) Consent may be withheld in the following circumstances:

- i. Where the personality of the proposed lessee/sub-lessee is in doubt.
- ii. The purpose for which the property is to be used is not certain or known or it will be in breach of the user covenant.

2 MARKS

QUESTION 2

(a) As a general rule, where part-payment of consideration is made in a sale of land, failure by the purchaser to pay the balance would not entitle the vendor to rescind the contract and re-sell the property to another.

However, on the authority of **Odusoga v. Ricketts**, payment of full purchase price (within the stipulated time or, in the absence of a stipulated time, within a reasonable time) coupled with possession, gives the purchaser an equitable title and he is entitled to seek an order of specific performance to compel the vendor

to compel the vendor to convey legal title to him. However, where the purchase price of land is not fully paid there can be no valid sale, notwithstanding that the purchaser is in possession. That possession cannot defeat the title of the vendor, and the purchaser in such a case will have NO right to enforce specific performance. Also, where the purchaser who has made a part-payment of the purchase price is in default of payment of the balance within a reasonable time, the vendor is entitled to rescind the contract of sale and re-sell the property.

Therefore, the sale to University of Lagos is valid because of the following reasons:

- i. Mr. Johnson had failed to pay the full purchase price within reasonable time despite repeated demands. Four years was beyond reasonable time.
- ii. The sale to University of Lagos was duly registered unlike that of Mr. Johnson, hence Mr. Johnson had lost priority.
- iii. The fact that Mr. Johnson was in possession made no difference as the Vendors were entitled to rescind the contract and re-sell the property following Mr. Johnson's default in paying the balance within a reasonable time.

3½ MARKS

(b) The final document is Deed of Assignment. Concluding Part of a Deed of Assignment is drafted thus:

IN WITNESS OF WHICH the parties have executed this Deed in the manner below the day and year first above written.

OR

IN WITNESS OF WHICH the Assignors have set their hands and seals and Assignee has caused its Common Seal to be affixed to this Deed in the manner below the day and year first above written.

SIGNED, SEALED & DELIVERED by the within-named ASSIGNORS

(NAME OF ADMINISTRATOR)
ADMINISTRATOR)

(NAME OF

(Administrators of the Estate of Mr. Dosu Moses by virtue of the Letters of
Administrators dated Day of ...20.....)

IN THE PRESENCE OF:

NAME:

ADDRESS:.....

OCCUPATION:.....

SIGNATURE:.....

THE COMMON SEAL OF UNIVERSITY OF LAGOS (ASSIGNEE) WAS AFFIXED TO THIS
DEED AND THE DEED WAS DULY DELIVERED IN THE PRESENCE OF:

PRINCIPAL OFFICER

PRINCIPAL OFFICER

2 MARKS

Question 2 (c)

Registration generally governs priority where a later registered interest is that of a
bona fide purchaser for value without notice of the interest of the prior

purchaser. The mere fact of registration by University of Lagos gave priority to the University over and against Mr. Johnson whose interest was not registered. Besides, Johnson could not have registered his equitable interest in the property since equitable interests are not usually registered. **Okoye v. Dumez.**

Registration also constitutes notice to the whole World.

Registration also translates the document to a public document.

½ MARK

Question 2(d)

Capacity (and Status) of the parties in the transactions:

(1) The Vendors in both transactions are Administrators of the Estate of Mr. Dosu Moses who must act jointly who must have been appointed by the Letters of Administration obtained from the High Court. These administrators of would convey the property as personal representatives.

(2) The purchaser in the first sale transaction is Mr. Williams Johnson of 22, Dove Street, Ilasamaja, Ogun State.

(3) The purchaser in the second sale transaction is University of Lagos. It is a statutory body empowered by law as having capacity to enter into any contract in its own name.

1½ MARKS

Question 2(e)

The contract between Mr. Johnson and the Administrators of the Estate of Mr. Moses is an example of an open contract. To be valid, the following features must be present:

- It must be in writing - this is to comply with the minimum requirement of the Statute of Frauds Act, 1877. The terms of the transaction may be evidenced by several documents.
- It must state the price - this is to ensure that the transaction is not gratuitous.
- It must describe the property - this is to make the property ascertainable.
- It must clearly identify the parties.
- It must be signed by the party to be bound.

2 MARKS

Question 2(f)

Qualities of a good root of title

- (i) Must give adequate particulars of the property
- (ii) Must give adequate particulars of the parties
- (iii) Must have or convey both legal and equitable interest in the property to the owner/ holder.

For example, an equitable mortgage and a contract of sale do not qualify as good roots of title since they do not convey the legal interest.

- (iv) Must not be subject to a higher interest. For example, a lease is not a good root of title because it is subject to a higher interest.

- (v) On the face of it, must not look suspicious; must appear regular/genuine

2 MARKS

Question 2(g)

The types of Rent

- (i) Rack Rent
- (ii) Premium
- (iii) Ground Rent

1½ MARKS

Difference between a Rent Review Clause (RRC) and an Option to Renew Clause (ORC)

(i) Option to renew (ORC) goes to the term of years whereas Rent Review Clause (RRC)

goes to the rent payable.

(ii) ORC is a clause that enables the lessee to apply within set time to have the lease renewed at the end of the current term, upon the lessee's fulfilment of set conditions. On the other hand, RRC is a clause that enables the Lessor to undertake, with the lessee, a periodic upward review of the rent payable in respect of the demised premises.

(iii) RRC enures to the lessor whereas ORC enures to the benefit of the lessee.

(iv) RRC does not involve nor require a review of entire lease, unlike the ORC.

ANY TWO

1 MARK

QUESTION 3 (a) (i)

Commencement: THIS (DEED OF) SUB-LEASE Made....

(1MARK)

(2) Execution clause:

SIGNED, SEALED AND DELIVERED by The Lessor

.....LS

SIR DADINKOWA

In the presence of:

NAME:

ADDRESS:

OCCUPATION:

SIGNATURE:

THE COMMON SEAL OF Bluewater Vessels Ltd was affixed to this Deed and duly executed in the presence of:

.....

.....

...

DIRECTOR

SECRETARY

(2MARKS)

QUESTION 3 (a) (ii)

Documents required to perfect a mortgage transaction are as follows:

1. Application/cover letter for consent
2. Application Form for consent (Form 1C)
3. Duly executed deed of mortgage
4. Tax clearance certificate of the parties
5. Receipts for payment for development levy; consent fee and inspection fee
6. CTC of certificate of incorporation
7. CTC of memorandum and articles of Association

8. CTC of form CAC 7 for particulars of directors, etc

(Any five of the above) (1MARK)

QUESTION 3 (b)

The following steps would need to be taken to recover professional fees:

Prepare the bill of charges and have it signed by the legal practitioner or any other legal practitioner in his firm

Deliver the bill of charges by personal service or by post to the last known address of the client

The legal practitioner waits for the expiration of one month which may be abridged by the court in appropriate circumstances

Where the client fails to pay, the legal practitioner files his writ in the High Court of the place where he has firm-**S.16, LPA; Okenla v Bakare; Oyekanmi v NEPA. (1 ½ MARKS)**

QUESTION 3 (c) (i)

Commencement of Dadinko's Will:

THIS IS THE LAST WILL AND TESTAMENT OF ME. (1MARK)

Testimonium:

In witness of which I have executed this my Will in the manner below day and year first above written. **(1MARK)**

QUESTION 3 (c) (ii)

Steps for perfection of the mortgage are as follows:

Obtaining the consent of the Governor-S.22/25.LUA

Stamping of the Deed of mortgage S. 23, SDA

Registering the Deed of mortgage S.16, LIRL; **Onashile v. Barclays Bank DCO (1 ½ MARKS)**

QUESTION 3 (d)

A grant of probate must not be made during the pendency of a caveat (Dan Jumbo v Dan-Jumbo). A caveat will be ineffective where it is filed during the pendency of a suit. In the instant case, the probate Registrar can disregard the caveat as it is ineffective.

(2MARKS)

QUESTION 3 (e) (i)

The accounts to be filed by the administrator should contain:

Full inventory of assets in the estate

Vouchers in possession of the administrator

All incomes and expenditure incurred in course of administration

Verifying affidavit

Effect of failure to file the accounts:

The administrator is expected to file the accounts every 12 months-Order 55 Rule 46. Where he fails to file the account, he can be fined or imprisoned after service of notice to show cause-**Order 55 Rule 46(8) (Lagos). (2MARKS)**

QUESTION 3 (e) (ii)

Documents required to secure non-contentious probate:

1./Letter of application

2. Copy of the will marked by the applicant
3. Death certificate
- 4./Proof of identity of the applicant
5. Oath by executor-stating date of death; place of domicile of testator; place of death; and that he (executor) will faithfully administer the will)
6. Affidavit of due execution/affidavit of hand writing especially in the case of the will of a blind person or an illiterate-

(2MARKS)

REGISTRATION OF TITLES LAW, CAP R4, LAWS OF LAGOS STATE, 2003

FORM 4

(s. 14)

LEASE

TITLE NO:.....

DATE:.....

I,

.....OF.....
.....

.....(Lessor), by this Deed
lease.....

.....being the land/property comprised in
the avofce title

to.....of.....commencing
on

.....and to terminate on.....PAYING

THEREFORE the rent

of) to be paid
without any deduction by equal half-yearly/yearly/quarterly payment
on

.....the first of such payment to be made
on.....next

THE LESSEE HEREBY COVENANTS as follows:

1.....

2.....

4..... etc

THE LESSOR COVENANTS as follows;

1.....

3. etc

(You may include any other terms or agreements reached by the parties)

AND I the said Lessee hereby apply to be registered as owner of the lease hereby
created

SIGNED AND DELIVERED by the said Lessor

.....

(name of lessor)

Thisday of20.....,IN MY PRESENCE

Name:.....

Sign:.....

Address:.....

Occupation:.....

SIGNED AND DELIVERED by the said Lessee

.....

(name of lessee)

Thisday of20.....,IN MY PRESENCE

Name:.....

Sign:.....

Address:.....

Occupation:.....

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NIGERIAN LAW SCHOOL

BWARI-ABUJA

BAR PT 11 EXAMINATION (BACKLOG) JANUARY 2020

PROPERTY LAW PRACTICE

MARKING SCHEME

SECTION B

QUESTION 4

QUESTION 4 (a) (i)

Where rents is charged in advance for so many years, the following consequences may arise:

Inflation: Inflation affects the value of the proceeds (rent) received from the property before the expiration of the period of the lease.

Higher Taxation: the more rent a lessor obtains, the more personal income tax he pays-s.3, PITA (3MARKS)

Offence: may be an offence (for eg,. in Lagos, where the law (Tenancy law 2011, forbids collection of rent in advance for more than one year.)

QUESTION 4 (a) (ii)

Any transfer of legal interest in land by way of sale, mortgage and lease requires the consent of the Governor Section 22 of the Land Use Act. It is the duty of the Lessor to seek the Governor's consent.

(2 MARKS)

QUESTION 4 (b)

A Power of Attorney is merely an instrument of delegation. It does not transfer title to land *Ezeigwe V. Awudu*; *UDE v NWARA*. No title was transferred by the use of the irrevocable power of attorney or by any power of attorney. The proper instrument of transfer should have been a Deed of Assignment. **(2MARKS)**

QUESTION 4 (c) (i)

I, Kunle Apex, businessman ofHEREBY APPOINT.....ofas my true and lawful attorney to do all or any of the following: (1MARK)

QUESTION 4 (c) (ii)

THIS DEED ASSIGNMENT.....(2MARKS)

QUESTION 4 (d) (i)

A mortgagee can sell security once the power of sale has arisen even where there is a judgment against the mortgagor over the unpaid loan. The mortgagee has the option of either resorting to its statutory right of sale or executing the judgment- In *Olori Motors Ltd v. UBN*. The step taken by the bank is valid. **(2MARKS)**

QUESTION 4 (d) (ii)

The appointment of S.K Joseph, Esqs law firm as solicitors to the estate of the deceased when he is still acting as an executor/trustee is ethically wrong. See NBA v. Koku. (2MARKS)

QUESTION 4 (e) (i)

$$N100 = N37.50$$

$$N1000 = N25 \times N900$$

$$N100$$

$$= N225$$

$$N119,000 = N12.50 \times N119,000$$

$$N \quad 100$$

$$= N14,875$$

$$\text{Sum Total} = N37.50 = N 225.00 = N14,875.00$$

$$\text{Fees due from the lessor} = N15,137.50$$

$$\text{Fees due to the lessee} = N15,137.50 \div 4 = N 3784.375$$

$$\text{Fees for both parties: } N15,137.50 + 3784.375 = N18,921.875$$

(3MARKS)

QUESTION 4B (i).

How the title will be deduced: The Vendor deduces his title by proving his root of title. This he can do either by:

Abstract of Title- This is a summary of the contents and of events affecting the land in course of devolution from original or grantee to the current vendor; or by

Epitome of Title:- This is a schedule of events or transactions affecting the land in Chronological order of devolution accompanied with copies of documents of title.
(2MARKS)

QUESTION 4 (B) (ii)

In Lagos, title to land can be investigated in the following ways:

By carrying out searches (at the land registry, Corporate Affairs Commission, probate office)

By making physical inspection of the property

By investigating the family background or history of the property

Examining or scrutinizing the title documents submitted or abstracted by the vendor

Examining copies of judgment relating to the property, if any

Making requisition about unclear issues arising from investigation or searches conducted by the purchaser or his representative.

(4MARKS)

QUESTION 4 (B) (iii)

Legal Mortgages could be created in Abuja by:

Assignment

Sub-demise

Statutory Charge expressed to be by way of a legal mortgage.

See. Section 26 C.A.

Yes, he could create successive legal mortgages over his property in Abuja if the initial mortgage was created by sub-demise. But, it could be argued that since the common law doctrine of *interesse termini* applies to CA states, of which Abuja is one, creation of successive legal mortgages is not possible unless and until the first legal mortgage is discharged.

(4MARKS)

QUESTION 5 (a)

This Lease/ This Deed of Lease made this....day of....., 2012 Between Mr. Myles Bello of No. 20, Agudama Street, Yenagoa, Bayelsa State (The lessor) of the one part

AND

Tunde Young of the Nigerian National Petroleum Corporation, Brass (The Lessee) of the other part

THIS DEED WITNESSES AS FOLLOWS;

In consideration of the rent of N600,000 paid by the lessee, (the receipt of which the lessor acknowledges), the lessor lets to the lessee ALL THAT property at No. 70, Ox-Bow Lake Estate together with appurtenances (The Property) for a term of 6 years commencing on the 12th of May, 2012.

The Lessee Covenants:

The Lessor Covenants:

In witness of which the parties have executed this lease in the manner below day and year first above written.

SIGNED, SEALED AND DELIVERED

By The Lessor,

The contents of this Deed having been first read and interpreted by me.....from English language intoand when he appeared to perfectly understand same he affixed his thumb impression.

.....

MR. MYLES BELLO

In the presence of :

Name

Address

Occupation: Magistrate/Justice of Peace/Notary Public

SIGNED, SEALED AND DELIVERED

By The Lessee

.....
TUNDE YOUNG

In the presence of :

Name

Address

Occupation:

(10 MARKS)

QUESTION 5 (B)

Consideration received: 4 million naira

Cost of purchase of property: 1 million

Gain made: 3 million

Less

Painting = 300,000

Solicitors fees = 400,000

Total allowable expenditure: 700,000

CGT (10%) of 2.3 million = 230,000

CGT payable N230,000.

(5 MARKS)

QUESTION 6 (a)

The taxes that will apply to the transactions include:

1. STAMP DUTY
2. CONSENT FEE
3. PERSONAL INCOME TAX
4. COMPANY INCOME TAX
5. REGISTRATION FEES

(2MARKS)

QUESTION 6 (b)

The procedure for registration of the property in Ebute Metta (under the RTL) is as follows;

Presentation of the instrument at the appropriate land registry

Payment of registration fee

Endorsement of certificate of registration by the registrar-S.17, LIRL

Copy of the instrument so certified by the registrar pasted or bound in one of the register book

CTC issued to person presenting the instrument for registration if requested by him

(2MARKS)

QUESTION 6 (c) (i)

By virtue of Section 49 Administration of Estates Law, where a deceased died intestate, the order of priority is as follows:

Spouse of the deceased

Child or children of the deceased

Parents of the deceased

Brothers and Sisters of the full blood

In the circumstances, the person entitled to letters of Administration in respect of Engr. Robosas estate is Mrs. Robosa and not Mr. Kwagie. **OBUSEZ V OBUSEZ**

(4MARKS)

The only person entitled to deal with the estate of a deceased is a personal representative after probate or letters of Administration has been obtained. The sale of the property by Mr. Kwagie without the relevant letters of administration is invalid. Where a property that forms part of the deceased is dealt with by someone that is not an administrator or executor, the person is personally liable for the interference with the estate as an executor de son tort.

(2MARKS)

QUESTION 6 (c) (ii)

Completion of the ATTACHED FORM (3MARKS)

QUESTION 6 (c) (iii)

Mortgagees solicitors fees Consideration = N=10,000,000.00

First 1,000 = $1,000/100 \times 22.50 = 225.00$

Second and third 1,000 = $2,000/100 \times 22.50 = 450.00$

4th 1,000 up to 20,000 = $17,000/100 \times 11.25 = 1912.50$

Remainder without limited = $9,980,000/100 \times 2.50 = 249,500$

TOTAL 252,087.50

(2MARKS)