

COUNCIL OF LEGAL EDUCATION



EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES

ATP 107: CONVEYANCING

WEDNESDAY 25TH JULY 2012

DURATION: 3 HOURS

Instructions to Candidates

- (a) Answer question ONE and any other THREE questions
- (b) All questions carry 15 marks each
- (c) Marks may be lost for illegibility

PLEASE TURN OVER

1. Evans Muriuki is desirous of developing 24 luxury apartments in Watamu on a parcel of land registered as Title Deed Gede/Kirepwe/Kilifi/289 registered under the provisions of the Registered Land Act. The parcel of land is situated next to the Indian Ocean and the area generally zoned by Kilifi Municipal Council as a marine conservation "protected" area due to its fragile ecosystem. The architectural design for the luxury "homes" project has been approved by the council but an Environmental Impact Assessment (EIA) licence is yet to be issued by the National Environmental Management Authority (NEMA). The sale price of the units is Kshs.10,500,000/= per apartment. The vendor has issued letters to offer to prospective purchasers. A section of the letter of offer issued to Alice Kipyego your client reads as follows;

Clause 2.2 The purchase price payable per apartment shall be Kshs.10,500,000/= out of which the purchaser shall pay the vendor Kshs.5,000,000/= as commitment fees immediately upon the signing of this letter. The balance of Kshs.5,500,000/= will be paid as follows;

Kshs.3,500,000/= within 60 days of the date of this letter and Kshs.2,000,000/= within 120 days of the date of this letter.

Clause 3. Incidental costs

- 3.1 The Vendor will pay architects fees and concept development fees;*
- 3.2 The Purchaser will bear all costs incidental to the purchase of its apartment including but not limited to the legal fees, stamp duty and other fees required to effect transfer of the apartments to its name;*
- 3.3 The Purchaser will also bear the costs of setting up a management company which shall be incorporated upon completion of the project;*
- 3.4 The estimated costs are based on professional advice. The final costs may vary slightly.*

4. Completion date

- 4.1 The Completion of the sale and purchase will be approximately 18 – 24 months.*
- 5.1 This offer is valid for 7 days only from the date of issue.*

The letter of offer is dated 25th July 2012

The units are yet to be constructed but your clients Alice Kipyego has agreed to purchase 2 units on the basis of the approved architectural designs and other "building documents" to be inspected at the vendor's office. The letter of offer also expressly provides that the Sectional Properties Act 1987 will apply to this contract, save that the vendor will not hold any deposit paid in trust for the purchaser.

- a.) What document(s) will you require from the vendor or his advocates immediately upon acceptance of the offer by the purchaser to safeguard your client's interests any why?

(3 marks)

b.) What contract completion documents would you require from the vendor that relate to satisfactory completion of construction works and finishings of the units and/or defects liability? (7 marks)

c.) The purchaser inquires from you the likely possession date of the apartments and what titles it is envisaged the vendor will issue to the purchasers?

Advice. (5 marks)

2. You are newly recruited as an advocate and are now working as a Registrar at Kisumu Lands Office. You are required to brief the other registry staff of the "recent developments" relating to the enactment of the new land laws and are preparing a brief executive summary for that purpose which will also be copied to your bosses, the Chief Lands Registrar and the Commissioner of Lands.

a.) What laws do you consider? (8 marks)

b.) Which laws were repealed by the two land laws enacted on 2nd May 2012. (7 marks)

3. China Qiny Wy Limited was registered by the Registrar of Companies on 3rd February 2012 vide a Certificate of Incorporation No. CPR/2012/21456. Its primary objectives include real estate acquisition and development. The company engages you to be its principal adviser in land purchase and sale transactions. Its shareholders are Qiny Wui Wy holding 50% shares, Zhang Zhong Wy holding 30% shares and Peter Muriuki holding 20% shares. The authorized share capital of the company is Kshs.100,000/= divided into 1000 shares of Kshs.100/= each. The company has negotiated to purchase two parcels of land on the outskirts of Nairobi. The first parcel is registered as I.R 883942 and borders Jomo Kenyatta International Airport and is registered in the names of Knightly Frankson Limited but was charged to I&M Bank Limited for Kshs.25,000,000/= on 4th April 2012. The vendor has agreed to sell it to China Qiny Wy Limited for Kshs.120,000,000/=. The second parcels is in Kitengela and is registered as Kajiado/Kitengela/495/993. The Title Deed was issued by the Kajiado Lands Registrar on 30th June 2012.

a.) What steps do you take as the purchaser's advocates to facilitate the purchase of the parcels by your clients and what advice do you give your clients? (5 marks)

b.) The land registered as I.R 883942 is adjacent to the airport and is also designated as a "fly zone" by Kenya Civil Aviation Authority. What steps do you take to enable your clients obtain approval for a 30 Town Houses residential project. (5 marks)

c.) What statutes laws govern the titles the subject the matter of these transactions and what "statutory restrictions" may inhibit the outright transfer of the titles? (5 marks)

4.

a.) Briefly outline and discuss the duties of a Chargee's Advocate in a conveyancing transaction. (8 marks)

- b.) Bank of China, Nairobi ('BOC') has agreed to lend Yu Chan a sum of Kshs.3,000,000/=. The amount is to be secured by a first legal charge over Yu Chan's apartment No.1 in Block B on Land Reference number 209/399. The apartment is held by Yu Chan on a lease from Splendor Estates Limited for a term of 99 years from 1.2.2000. The lease is registered under the Registration of Titles Act (Cap 281)(now repealed).

You act on behalf of Yu Chan while BOC is represented in the transaction by Prez Associates.

Outline how you would proceed on behalf of Yu Chan to see to a successful completion of the transaction.

(7 Marks)

5. Chris and Mary are non-resident Kenyan citizens who own a 12acre parcel of land in rural Kitengela. They intend to sell the land to your clients who are ten in number. Each of your clients expects to own an acre of the land. Chris approaches you and indicates that both himself and Mary will be in the country for a very limited period of time. He comes with his brother Francis who will oversee the transaction on their behalf. Chris wants you to act for them too. Your clients have no problem with your acting for both parties. Both Chris and your clients want a brief opinion on how to go about the transaction.

Advise the parties, stating how you would go about the transaction and also stating the particular documents you will need from the parties to successfully complete the transaction.

(15 Marks)

6.

- a.) State two essentials ingredients of a valid Lease as an instrument of Conveyancing.

(3 Marks)

- b.) Mrs. Rop is the owner of Turiland, an expansive 1000 acre farmland in the Rift Valley. She intends to lease Turiland to her neighbor Mr. Kandie for a period of 10years to use as cattle ranch. They have agreed on an annual rent of 500,000/=. The property is registered under the Registered Land Act (Cap 300)(now repealed) and is situate within Uasin Gishu District. Mrs. Rop holds the property on a 99-year lease from the Kenya Agricultural Research Institute. She pays a yearly rent of Kshs.10,000/= but is currently has arrears of kshs.40,000/=. She instructs you to prepare a lease in favor of Mr. Kandie. You are a qualified advocate. She is however keen in knowing how you will run the process.

Outline systematically how you will ensure a successful completion of the transaction.

(12 Marks)