



LAW SCHOOL

**THIRD YEAR UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB)
DEGREE**

AND

**PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE
PROGRAMME**

EQUITY AND TRUST

RLLB 309

AUGUST 2015

Lecturer: Dr Nicholas Orago

Instructions

1. Attempt question **ONE (Compulsory)** and any other **TWO** questions.
2. This is a closed-book exam; any use of unauthorised material will lead to expulsion from the exam room and subsequent disciplinary action by the School.
3. Read each question carefully before attempting to answer it.
4. Write your answers clearly, marks will be lost for illegibility.
5. Comprehensiveness of analysis, clarity of arguments and logical structuring of arguments will earn you more marks.

Question one

Martha, a hardworking and industrious lady, lives and does business in Britain. Due to her industry, she has bought several houses in Lang'ata, Nairobi, three of which she has been leasing to the Kenya Defence Forces (KDF). Japheth, a young man with great ambitions, always desired to purchase a house in Lang'ata, but had been unable to do so due to the high prices of property in Lang'ata and his inability to secure financing from banks and other financial institutions. Japheth has learnt of Martha's ownership of the three houses being rented by KDF and has designs to purchase one of them by hook or crook. He sends Martha an email detailing the poor condition of one of the houses due to poor maintenance by the tenants, the KDF. He further states that the said house has been earmarked for demolition by the Kenya Airports Authority (KAA) for being in the flight path and posing a security risk to the planes at Wilson Airport. In the email, Japheth offers to purchase the "condemned" house from Martha at Kshs. 7 million, way below the market price of the house which was then valued at Kshs. 20 million. Martha questions the low asking price, but Japheth tells her that property prices have considerably fallen in Nairobi due to the security threats posed by the terror group Al-Shabaab.

Taking into account all the circumstances as per Japheth's email, Martha agreed to sell the house to Japheth at the proposed price and a Sale Agreement was prepared and signed by both parties, though the transfer documents had not yet been prepared. Martha came back into the country to complete the transactions, but her inspection of the house revealed that it had been perfectly maintained by the KDF and that it was in good condition. She also discovered that the house had not been condemned for demolition as was stated by Japheth, and that the terror threats from Al-Shabaab have in no way led to the reduction in property prices in Nairobi. Based on her findings, Martha refused to sell the property to Japheth and repudiated the Sale Agreement. Five years after Martha's repudiation of the Sale Agreement, Japheth files a suit in court demanding for the specific performance of the Sale Agreement and the transfer of the house to him. Japheth is, however, unwilling to pay the proper market price for the house, which has now appreciated to Kshs. 30 million, insisting on paying the previously agreed price of Kshs. 7 million.

You are the judge at the Milimani Law Courts and the matter has been argued in your court. Decide the case, supporting your decision with the relevant principles and case law

30 Marks

Question two

Trustees play a very prominent role in the creation and management of trust relationships. Using relevant statutory provisions, principles of equity and judicial decisions, undertake a comprehensive analysis of the following in relation to trustees:

a) Appointment and termination of trustees

10 Marks

b) Duties and responsibilities of trustees

10 Marks

Question three

Professor Julius Wawire, a Kenyan scientist has been working closely with Professor Daniel Smith from the United States of America on a collaborative scientific research project to develop a new vaccine for the Ebola Virus. The two researchers have concluded their preliminary research and are scheduled to present their preliminary research findings at a seminar to be held in September 2015 in Nairobi. However, Prof. Wawire has just received confidential information from reliable sources that Prof. Smith is scheduled to leave the country for good with the formula and the prepared samples and to patent them in his home country of the USA. Prof. Wawire is apprehensive that he is going to lose out on the research and has sought your urgent advice as an advocate on how best to protect his interests.

Undertake a comprehensive analysis of the application that you will file in court, the principles which the court will apply in determining the application and the likely outcome. Support your answer with relevant decided authorities.

20 Marks

Question four

Jerry Muriuki had been married to Salima Mrembo for five years. The couple purchased a town house in Karen that they used as the family home. Since both were working at the time of the purchase, they agreed to contribute equally to the purchase price of the house. However, when it came to the transfer of title to the property to the couple, Jerry requested that the property be registered in the sole name of Salima. The reason for this was because Jerry wanted to keep the property out of reach of his creditors, whom he owed a substantial amount of money.

After the purchase of the property, the couple lived in the house for another 5 years. During this period, Jerry's financial situation improved and he was able to pay his creditors, without being at any time declared bankrupt.

After 10 years of marriage, the couple experienced serious marital problems, resulting in the marriage breaking down irretrievably. Salima moved out of the house, filed for divorce and demanded that Jerry vacate the house. Jerry moved to court to oppose the eviction suit and further filed an application for the court to make a declaration that Salima was holding the property in trust for both of them and that he was entitled to 50 per cent of the property. In her defence, Salima argues that she

did not hold the property in trust, but was an absolute owner as Jerry had advanced the property to her.

You are a judge in the High Court of Kenya in Milimani and the matter has been argued in your court. Decide the case giving reasons for your decision and citing relevant authority.

20 Marks