



LAW SCHOOL

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

RLLB 305: PROPERTY LAW II

December 2014

Examiner: Mrs. F.K. Githiru

Instructions:

1. Time allowed is 3 hours.
2. This is an open book examination. Students are allowed into the examination room with a CLEAN COPY of the 2010 Constitution and the Lands Act 2012 ONLY.
3. This paper consists of THREE questions.
4. Answer ALL questions.

QUESTION ONE:

Kennedy, an aspiring business man sort a bank loan to begin his timber business. He gave his 10 acre piece of land at Kitengela Springs as security to HFCK Bank and secured a loan of Kshs 2,000,000/=. After some time he approached the bank for a top up and a second charge was registered on the same piece of land for a further 1,800,000/=.

It was a wonderful business year for Kennedy and business was doing really well. He decided to expand his timber business from Nairobi to Nakuru but to do so he needed financial accommodation. Having joined Equity Bank he decided to take a fresh loan with the bank because they had very competitive interest rates. During the transaction the lawyers conducted a search and found that although a charge with tacking interests had been earlier registered, the security was sufficient to stand in for the loan, as a result of its appreciation in value. They therefore gave Kennedy a loan of 2,500,000/= and registered a subsequent charge on the Kitengela parcel.

Business would continue to do well but not for so long. As a result of the economic crunch that hit the country a few months ago, prices sky rocketed, interest rates hit an all record high and business was extremely poor. Kennedy had stretched himself too thin and could not service the loan. He fell in areas as a result of which the banks needed to take action against him.

- a. As a corporate lawyer, advice the institutions on the remedies available to them and the option that you think is most suitable under the circumstances.

- b. Explain to the institutions the effect of the three charges and their priority with respect to the charged security.

Use case law and statutory authority as relevant.

25 marks

QUESTION TWO

Paul, a student at Riara University has been renting a house from Peter at a nearby estate for the past one year at a monthly rent of 8,000/=. The one year lease commenced on 12th June 2013. After one year neither Paul nor Peter sort to renew the lease although Paul continued paying his rent faithfully until 3 months ago when he fell in arrears. Peter is unhappy about this and wants Paul out. Paul on the other hand is not willing to pay a 2,000/= increment in rent that Peter has decided to effect.

- a. Explain to the two parties the nature of their rights and obligations against each other and their remedies.

Supposing Paul was sharing Peter's house and occupying one bedroom in the house. Paul had a key to his room and to the main gate but he relied on Peter to get access to the kitchen, the front garden and the laundry area.

- b. Discuss the nature of the agreement between Paul and Peter and differentiate it to the first arrangement.

15 marks

QUESTION THREE

"The formulation of a comprehensive National Land Policy commenced in February 2004. In April 2007, a Draft National Land Policy was adopted by stakeholders through a National Symposium. The Seventh Cabinet meeting held on 25th June, 2009 approved the Draft National Land Policy and directed the Minister for Lands to proceed with the preparation of the Sessional Paper for presentation to Parliament. The Sessional Paper is now ready and this marks a critical milestone in the National Land Policy Formulation Process. ...

This Sessional Paper, therefore, presents the issues and policy recommendations that have been identified, analyzed and agreed upon by the stakeholders. It is a hall mark of the rare sense of dialogue and collaboration between the Government and the Citizenry in tackling, arguably, the most emotive and culturally sensitive issue in Kenya. In this respect, therefore, the Paper will form the foundation upon which the administrative and legislative framework will be built. This is the framework that will drive the critically required land reforms in this country. .."

Sessional Paper No 3 of 2009 on National Land Policy pg vii

Against the above excerpt, discuss the nature of past injustices dealing with land and the extent to which the land reforms initiated under the 2010 Constitution has tackled these challenges.

30 marks