

COUNCIL OF LEGAL EDUCATION.



**EXAMINATION FOR ADMISSION
TO THE ROLL OF ADVOCATES.**

ATP 107: CONVEYANCING

MONDAY 15TH JULY, 2019.

DURATION: 3 HOURS.

Instructions to Candidates:

- (a) This paper contains **Four (4) printed pages** including the cover page, with a total of **Six questions**.
- (b) Candidates **MUST** answer **FIVE** questions.
- (c) **Question ONE** is compulsory and carries **20 marks**.
- (d) **All other questions** carry **10 marks each**.
- (e) Answers **MUST** be supported by relevant case law and statutory provisions where required.

PLEASE TURN OVER

QUESTION ONE

Your client Mark has a property for sale and attends your office accompanied by Jane a prospective purchaser. In the client interview, the following facts emerge:

- i) Mark is the registered owner and produces a Certificate of Lease for the property Title Number Nairobi Block/1700/100 and copy of a lease by the Government of Kenya for the same. The documents show:
 - The tenure is leasehold for 99 years from 1st June 1989 under the Registered Lands Act (Cap 300).
 - Land rent is indicated as 'a Peppercorn (if demanded)'
 - Size of the property is 0.5010 hectares
 - The property is situated within Nairobi City County
 - The user on the lease document is indicated as "Light Industrial Purposes with Ancillary Offices"
- ii) Mark is concerned because he has learnt that unknown property brokers have been showing the property to would-be purchasers and he fears the brokers may defraud would be purchasers and leave him facing claims from the victims.
- iii) Jane is interested in the property on which she hopes to develop a housing estate to be known as Cystal Apartments.
- iv) Mark and Jane have agreed on a purchase price of Kshs.10 million but Jane only has 1 million cash and intends to finance the balance of Kshs.9 million through her bankers CIn Bank. The bank has verbally confirmed willingness to lend her the money subject to perfection of security.

Mark and Jane now seek your advice on the following respective matters:

- (a) Both Mark and Jane seek to know what is the meaning of Peppercorn rent and its logic in law. (2 marks)
- (b) Mark seeks your advice on how he can secure the property from possible fraud pending the completion of the sale to Jane or any other purchaser with whom he may end up contracting. (3 marks)
- (c) You have explained that it is Mark's obligation to procure the clearances and consents necessary to effect the transfer to the Purchaser.

Discuss the clearances and consents necessary for this transaction and why other clearances and consents normally required for other types of property are not necessary in this particular case. (5 marks)

- (d) Jane is concerned about the demand for a security by the bank since she does not own any land. She wants to know whether she can use the property under purchase and if so how, since the title is presently in Mark's name.

Mark is hesitant to have Jane use the title under purchase to secure her loan because he thinks it might expose him to liability and is unsure whether he will receive the full purchase price. How will you structure the transaction to take care of both Mark and Jane's concerns? (5 marks)