



SCHOOL OF LAW
PROGRAMME: BACHELOR OF LAWS
Course Title: PROPERTY THEORY
Course Code: LLB 204
September - December, 2022 Semester
FINAL EXAMINATION

INSTRUCTIONS: TIME: 2 HOURS

FINAL EXAMINATION (60 marks)

Instructions

- 1. Question One is Compulsory**
- 2. Answer any TWO other questions**

Question One

A few months before Noella's Grandfather passed on, He gave Noella a plot of land within Mavoko, Machakos County. He then peacefully died in his sleep on the night of December 31st, 2000. She was his only granddaughter and only Eighteen years then. About fifteen years later, Noella decided to visit the portion of land as a friend of hers, Ekusi, had made a good offer to her for the purchase of the land. To her utter shock and dismay, she found that one Pendo had put up a huge mansion where she had been living with her family for the past 10 years. Noella confronts Pendo on the legitimacy of Pendo's ownership of the land but Pendo is adamant. She claims she is an innocent purchaser of the parcel of land for value without notice. She argues that the land was wasting away and she only put it to good use.

- a.) Discuss the different forms of property that Noella's property may fall under. (10 marks)
- b.) Discuss the theories of property that Pendo may rely on to prove her ownership. (10 marks)

- c.) What would be the possible avenues for dispute resolution assuming both parties ascribe to the African perspectives of property? Discuss how these methods of dispute resolution would be applicable in Kenyan Courts. (10 marks)

Question Two

Mutunkei Ole Kereya has a large parcel of land around Ngong area, Kajiado County which he inherited from the late Father. The government has since embarked on a multi-billion project to extend the Standard Gauge Railway beyond Nairobi to Western Kenya via Ngong. Mutunkei has been approached by the Government to surrender a large portion of his land for the greater public good. Having heard that you are a renowned Property Lawyer, Mutunkei Ole Kereya has approached you for your opinion on the way forward. Prepare the legal brief.

(15 marks)

Question Three

Write short notes on the following

- a. **Goodwill** (5 marks)
- b. **Electromagnetic spectrum** (5 marks)
- c. **Feudal land system** (5 marks)

Question Four

Paulina has just arrived at your chambers distraught. She claims that she flew all the way to their Diani house to surprise her husband, Omusakhulu, whom she has been married to for the past thirty years only to catch him literally pants down with one of her nieces. She further reveals that other than the Diani property which she bought with her hard-earned cash, they have other properties in Kibera, Kitengela and South C. She informs you that they only lived as a couple in the Kibera home. The one in South C is a rental apartment. Her husband moved to Diani to supervise the construction of a set of apartments at the Coast and Paulina only visits him once a month. When the husband relocated, Paulina moved out of the Kibera house and into a mansionette in Kitengela. Paulina claims that the husband has never been gainfully employed and only depends on handouts from her. She wants a Divorce, but more importantly, she wants all the 5 properties including the apartments being constructed in

Diani to be registered in her name. Advise her on the chances of success. (15 marks)

Question Five

“The right to exclude others (from your property) is more than just “one of the most essential” constituents of property – it is the sine qua non. Give someone the right to exclude others from a valued resource and you give them property. Deny someone the exclusion right and they do not have property” Merrill, “Right to Exclude”

The right to exclude is arguably the most unique stick in the bundle of sticks which define property. Conceptualize the bundle of sticks discussing at least ten different sticks/strands and their importance or lack thereof in the said bundle (15 Marks)