



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM

JANUARY- MAY 2024

RLB 212: PROPERTY LAW

INSTRUCTOR: Ms. MILCAH KITHINJI

INSTRUCTIONS

1. This is the final examination in Property Law. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **FIVE** questions. Answer Question One and **any other two questions from section B**
3. This examination has 3pages, including this one.
4. Time allocated for this examination is **THREE** (3) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is a **CLOSED BOOK** examination. This means you are not permitted to bring ANY hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

SECTION A: (Compulsory) TOTAL MARKS FOR THIS SECTION IS 30.

Question One

(30 marks)

The Matrimonial Property Act, 2013 was passed into new law to regulate matrimonial property dealings in Kenya both during and on termination of a marriage relationship. The law, has, however received mixed reactions with some even arguing about its unconstitutionality. There is debate as to whether the law should be amended, repealed or implemented in its current form. Your law firm has been hired to help resolve this issue following the Supreme Court decision in 2023 in the case of *Joseph Egontoto vs Martha Egontoto*, Petition No. 11 of 2020. With the aid of decided cases and Legal provisions, prepare a legal opinion for the attention of the Cabinet detailing whether the law on matrimonial property improves past legal frameworks relating to matrimonial property and its constitutionality.

SECTION B: TOTAL MARKS FOR THIS SECTION IS 40

Question 2. (20 Marks)

Before the introduction of foreign rule, customary law predominantly regulated and governed relations (including property) among African communities. The existence of the two land regimes resulted in duality in land laws and policies that perpetuated a dual system of relationships consisting of an export enclave controlled by a small number of European settlers and a subsistence periphery operated by a large number of African peasantry. Through the Constitution and the Community Land Act, Kenya sought to reorganize the manner in which communally owned land is managed.

- (i) Identify the duality that presented itself during this period **(8 marks)**
- (ii) Critically evaluate the inadequacies of the current legal framework on community land management in Kenya. **(12 marks)**

Question 3 (20 Marks)

Identify the functions of each of the following institutions in land administration system in Kenya.

- (a) The National Land Commission (**6 marks**)
- (b) Environment and Land Court (**6 marks**)
- (c) The Ministry of Lands and Physical Planning (**8 marks**)

Question 4

Kalkye, an aspiring business man sort a bank loan to begin his fashion and design business. He gave his 3 acre piece of land at Kitusuru Village as security to Bank of Africa and secured a loan of Kshs 3,500,000/=. 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 650,000/=.

It was a wonderful business year for Kalkye and business was doing really well. He decided to expand his fashion and design business from Nairobi to Kampala given that 80% of his online clients were based there. He needed to get financial backing. Having joined KCB 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 3,000,000/= and registered a subsequent charge on the Kitusuru parcel.

Business would continue to do well but not for so long because of the Election turmoil in Kampala, Uganda. As a result of the prolonged shut down, violence and economic crunch that hit Kampala in the election period, prices sky rocketed, interest rates hit an all record high and business was extremely poor. Kalkye 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.) **20 marks**