



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM

JANUARY- APRIL 2024

RLLB 203: PROPERTY THEORY

INSTRUCTOR: Ms. MILCAH KITHINJI

INSTRUCTIONS

1. This is the final examination in Property Theory. 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)

Land tenure refers to body of rights owned by a person in a particular piece of land. It is conceptualised as being made up of a tripartite set of questions being: '**who** holds, what **interest** in what **land**'? The '**who**' is explained as people dimension of land tenure constituting the land owner; the '**what interest**' refers to the quantum of rights held; and the '**what land**' refers to the spatial dimension and includes the physical space.

Using the conceptualization of land tenure as a set of tripartite questions, discuss Kenya's legal framework on land tenure.

SECTION B. TOTAL MARKS FOR THIS SECTION IS 40.

Question Two

- (i) Article 68(c)(i) gave Parliament power to enact a legislation to prescribe minimum and maximum land holding acreages in respect of private land. Critically analyse the manner in which Parliament has discharged this obligation. **(10 marks)**

- (ii) The Constitution in article 260 defines land in the following terms:

“land” includes—

- (a) the surface of the earth and the subsurface rock;
- (b) any body of water on or under the surface;
- (c) marine waters in the territorial sea and exclusive economic zone;
- (d) natural resources completely contained on or under the surface; and
- (e) the air space above the surface;

This definition is an adoption of the common law *ad coelum* principle. Discuss the manner in which the constitution and the relevant legislations limit the scope of the *ad coelum* principle.

(10marks)

Question Three (20 marks)

John Cribbet notes that the concept of property is one that is '*truly in transition*'. Be that as it may, property to a lay person is a thing. It denotes the subject matter of a physical nature, such as land, a car, a house or a cow. One's property therefore is what he/she owns to do what he likes with it. However, to a lawyer property is a concept, separate, and distinct from the thing. It denotes a complex group of jural relations between the owner of a thing and all other individuals. Critically analyse the different jural relations that arise from property and the law.

Question Four (20 marks)

There are as many theories of property as there are property systems. By a theory of property is meant the normative justifications for granting property rights or allocating material resources in a particular way. You have been invited to the RUSA debate club to educate them on how a theory of property tries to ascertain and explain interests that are to be served by a property system. Critically analyze the different theories of property highlighting the advantages and disadvantages of each theory.

Question Five (20 Marks)

Review with the support of case law the following topics:

- a. Fixtures **(5 marks)**
- b. Compulsory Acquisition **(5 marks)**
- c. Adverse Possession **(5 marks)**
- d. Public and Private Property **(5 marks)**