

CHUKA



UNIVERSITY

FACULTY OF LAW

UNIVERSITY EXAMINATION 2023

SECOND YEAR EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

BLAW 225: THE LAW OF PROPERTY

DATE: MAY

INSTRUCTIONS:

ANSWER THREE QUESTIONS

QUESTION ONE IS MANDATORY

Q1. Thiankolu, a prominent businessman in Nairobi, deposited the Title Deed to his plot in Chuka Town with Kopesha Bank three years ago. In return he received some money which he used to put up a five storey building in the plot. He is still paying back those amounts advanced to him. The building is on Land Reference Number 10/2023, vide a grant registered as number IR 570023. He has let the basement and the 1st floor to Nafuu Limited, a pharmaceutical company. Nafuu limited stores cartons of medical products in the basement while its offices are located on the fourth floor.

Early this year, he sold all units on the third floor to Urembo Institute – a beauty college. He intends to retain the fourth floor for his own use and has been actively looking for buyers who may be interested in acquiring the third floor of his building. For ease of access, Thiankolu has metallic stairs on one side and a ramp for persons with disability on the other.

Thiankolu recently furnished to Nafuu Limited a one-page document that states as follows:

"Monthly consideration is Kshs. 100,000/= payable quarterly in advance;

Monthly service charge is Kshs. 10,000/= payable quarterly in advance;

Security deposit is Kshs. 300,000/=;

Here are the keys to the premises."

The document did not have any other terms or conditions. Both parties duly executed it.

- (a) Just four months after signing the document above, Nafuu Limited brought in medical supplies and stocks and stored them in the basement. There was a leakage of raw sewage in the building that flooded the basement that was caused by some structural defects in the building. Nafuu Limited are claiming for the value of their medical supplies from Thiankolu. Thiankolu has unequivocally stated that it is not his liability. With aid of relevant statutory provisions, explain to Thiankolu his rights and liabilities, if any, that may arise under the agreement (10 Marks)
- (b) Mawira has come to your offices with a detailed draft Lease Agreement from by Mr. Thiankolu's advocate, which he is yet to append his signature. He intends to take up one of the units on the third floor. The agreement also allows him to conduct quarrying activities and graze his livestock, all on Thiankolu's land which adjacent to the building. He has sought your advice. Explain to him ALL the interests and encumbrances, if any that exist on Thiankolu's land and how they may have been created. (20 Marks)
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2. Using case law, outline and analyze the historical development of the land tenure system in Kenya (20 Marks).
3. Citing relevant Constitutional and statutory provisions, and with the aid of appropriate judicial precedent, discuss the doctrine of eminent domain and its application in Kenya. (20 Marks).
4. Your friend, Mr. Niko Mbele, celebrated his marriage last year. He and his wife Mrs. Sisi Mbele are now in the process of purchasing an interest in a half acre parcel of land on which to build their matrimonial home. They intend to pay for the land by each contributing whatever they can towards the purchase price, which may not necessarily be in equal measure. At the time of filling in the documents for transfer of the property in their names, they notice a section that asks "type of proprietorship?". Advise them on the importance of this question provide them with an appropriate answer as you also explain to them other forms of proprietorship. (20 Marks)
5. *'Land in Kenya must be held, used and managed in a manner that is equitable, efficient, productive and sustainable'*- The Constitution of Kenya. Discuss the principles of Land policy provided in this article and briefly expound on their significance. (20 Marks)