

# EASY READ

STUDY SHOP



“*KEY QUESTIONS AND ANSWERS*”

ON

Course: Property Law Practice

“*Key questions and answers*”

**AREA OF CONCENTRATION**

1. **SALE OF LAND**
2. **LEASE**
3. **MORTGAGE**
4. **SACLE FEE**
5. **BILL OF CHARGES**
6. **POWER OF ATTORNEY**
7. **WILLS**

## SECTION I

### QUESTION 1

Chuks Taylor of No 10, Silas Street, Computer Village, Ikeja, Lagos is a businessman with a branch office in Brussels, Netherlands. He has entered into negotiation with Victor Omata of 6 Majekodunmi Street, Ikeja, Lagos to purchase a hectare of land in the Abule Quarters of Opebi, Ikeja, Lagos. Victor's interest is registered as No.92 at page 92 in volume 1992 in the Lands Registry, Alausa, Lagos.

Chuks has briefed you to represent him in the negotiation, purchase and perfection of title to the property. Victor is asking for N25million and wants the sum of N5million to be paid as deposit pending conclusion of negotiation/purchase. Chuks does not guarantee his consistent presence in Nigeria at all times and would not want to hold up negotiation and perfection.

Chuks and Victor have agreed that you should act for them both. They have also agreed that the deposit of N5million to be paid should be given to you as a stakeholder.

Answer the following questions:

- a. Write a letter to Chuks advising him on the steps to take if he cannot guarantee his consistent presence during the course of the negotiation.

#### ANSWER TO QUESTION 1 A

[Letter Head]

[Date]

MR. Chuks Taylor  
No 10, Silas Street,  
Computer Village,  
Ikeja, Lagos

Dear Sir

RE: APPOINTMENT OF A LAWFUL ATTORNEY

With respect to the above matter, due to fact that your presence in Nigeria is not guaranteed to hold up negotiation and perfection.

I humbly suggest you appoint a lawfully attorney who would act on your behalf.

Thank you.

Yours Faithfully

signed

Oboagwina Caleb Esq

- b. How would you investigate Victor's title?

#### ANSWER TO QUESTION 1 B

Title of Victor can be investigated in any of the following ways:

1. Search at the Lands Registry
2. Physical inspection of the property
3. Requisition arising from investigation

- c. How would you deal with the N5million paid to you as stakeholder?

#### ANSWER TO QUESTION 1 C

As stakeholder, the solicitor is to **hold the deposit for either of the parties to the transaction**; and to surrender same either to the vendor (if the contract succeeds) or the purchaser (if the contract falls through). He will not be liable to pay interest on deposit – **Sorrel v. Finch**

- d. List the professional responsibilities you must take in to account if you want to act for both parties.

**ANSWER TO QUESTION 1 D**

The solicitor acting for both parties should **ordinarily seek the consent of both parties** and be sure:

1. There is no conflict of interest
  2. The vendor has good title
  3. The terms are clear and agreed upon-**Smith v Mansi**
- e. Draft the introductory and operative part of the document to be executed between Chuks and Victor.

**ANSWER TO QUESTION 1 E**

**THE INTRODUCTORY PART**

*THIS DEED OF ASSIGNMENT made this \_\_\_ day of \_\_\_ 2018 BETWEEN CHUKS TAYLOR of 10 Silas Street, Computer Village, Ikeja, Lagos is a businessman (referred to as 'ASSIGNOR') OF THE ONE PART AND VICTOR OMATA of 6 Majekodunmi Street, Ikeja, Lagos (referred to 'ASSIGNEE) of the OTHER PART*

**OPERATIVE PART**

*THIS DEED WITNESS AS FOLLOWS:*

*In consideration of the sum of twenty-five million Naira (N25m) (deposit of the sum of five million Naira (N5m) paid by the assignee to the assignor (the receipt of which the Assignor acknowledges) the Assignor as BENEFICIAL OWNER hereby ASSIGNS ALL THAT PARCEL OF LAND situate at Abule Quarters of Opebi, Ikeja, Lagos registered as No.92 at page 92 in volume 1992 in the Lands Registry, Alausa, Lagos more particularly described and delineated in the survey plan no \_\_\_ contained in the schedule to this deed/agreement. TO HOLD UNTO the Assignee/purchaser the unexpired residue of the Assignor's interest*

- f. Using the scale below, calculate your fees for action by Chuks.

**Purchaser**

4. Purchaser's legal practitioner for investigating title to leasehold property and preparing legal documentation (including perusal and completion of contract, if any....	As in Part II thereof	22.50	11.25	7.50
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**ANSWER TO QUESTION 1 F**

His professional fees acting for Chuks is as follows (the steps must be follows)

1. 1st step:  $1,000/100 \times 22.5/1 = N225$
2. 2nd step:  $2,000/100 \times 22.5/1 = N450$
3. 3rd step:  $17,000/100 \times /11.25 = N1912.50$
4. 4th step:  $24,980,000/100 \times 7.50/1 = N 1,873,500$
5. Total fees =  $N 1,873,500 + N1912.50 + N450 + N225 = N1,876,087.50$ : His professional fees acting for Chuks is N1,876,087.50

g. outline the document that will be required to obtain governor consent

#### **ANSWER TO QUESTION 1 G**

Documents required processing Governor's consent:

1. Application for consent form (Form 1C)
2. Covering letter
3. Tax clearance certificate
4. Deed of assignment duly executed by both parties
5. CTC of the original title deed
6. Receipt for payment of consent fee; development fee
7. Survey plan

## QUESTION 2

**Madam Kate** Samuel is a rich businesswoman who has several properties in choice cities in Nigeria, including a parcel of land known as Plot 13, Cadastral Zone A01, Jabi District, **Abuja**, measuring about 1000 square meters, which she bought from Baba Shehu in July 2007, vide a Deed of Assignment registered as No.4 at page 4 in volume 123 of the Land Registry at Abuja FCT on 5<sup>th</sup> December, 2007 in the name of her company, Applause Industries Limited. Madam Kate had used the said plot to **obtain a loan** of N10million from Stanbic IBTC Bank, Maitama, Abuja in October 2018 with a repayment period of 5 years.

Baba Shehu, himself, was granted the said plot by the Minister of the Federal Capital Territory, Abuja vide a **certificate of occupancy** no FCT/03/WV2/91 dated 5<sup>th</sup> August, 1991 for residential use for 99 years commencing on 1<sup>st</sup> January, 1991. Baba Shehu is dead.

Madam Kate also owns Plot 4, Oba Adesida Street, Akure, Ondo State on which she has erected 10 blocks of 3-storey buildings.

Answer the following questions:

- a. Madam Kate has **agreed to sell** Plot 13, Jabi District, Abuja to Chief Bob Akan, a politician of No.2, Ribadu Close, Asokoro, Abuja and **Chief Bob Akpan** has engaged you as his Solicitor to investigate Madam Kate's title:

- i. Mention the places you would visit in the course of your investigations?

### ANSWER TO QUESTION 2 A (i)

The solicitor in the course of investigating the title of Madam Kate should visit:

1. Land Registry (AGIS)
2. The land itself
3. The probate registry
4. Corporate Affairs Commission

- ii. Draft the Search Report without covering letter in respect of the above property to be sent to Chief Bob Akpan.

### ANSWER TO QUESTION 2 A (ii)

#### [Letter Head]

April 23, 2018

Chief Bob Akpan,  
No.2, Ribadu Close,  
Asokoro, Abuja

Dear Sir,

#### **A SEARCH REPORT CONDUCTED ON PLOT 13, JABI DISTRICT, ABUJA**

The above subject matter refers. Kindly find the attached copy of the search report of our findings;

1. DATE OF SEARCH: 14/08/09
2. PLACE OF SEARCH: AGIS (Land Registry, FCT)
3. NATURE OF INTEREST: RIGHT OF OCCUPANCY
4. ANY ENCUMBERANCE: EXISTING MORTGAGE WITH STANBIC IBTC BANK, MAITAMA, ABUJA
5. COMMENT: NOT ADVISABLE UNLESS THE LOAN IS DISCHARGED

Yours faithfully,

Oboagwina Caleb Esq.  
Principal Partner

- b. Madam Kate wants to sell one of the blocks of flat in Akure and you are acting as a Solicitor to the purchaser, what clause would you require to be inserted in the conveyance to guarantee you client's access to the title documents covering the plot of land on which the building is erected?

**ANSWER TO QUESTION 2 B**

Clause to be inserted is: Acknowledgement of right of assignee to production of the original documents, and safe custody.

### QUESTION 3

Chief Tella and Prince Banjoko were childhood friends having grown up in the same community in Egbado, Ogun State. The two friends later became partners in a firm of Estate Developers and Valuer, Prince Banjoko sometimes in 1969 and located at No.33 Ojuwoye Street, Abeokuta.

In 2005, Chief Tella died intestate at the age of 65 years, leaving four children and his wife Apinke. Prince Banjoko died in 2017 leaving behind a son and two daughters, but he, through his will, executed and dated 20/6/2009 made his son the sole executor.

Answer the following questions

- a. The wife and children of Chief Tella, who died intestate, having sought your legal services. What would they need to do in order to legally administer the estate of the deceased?

#### ANSWER TO QUESTION 3 A

They need to apply for letters of administration

- b. Would your answer be different from above if there was a will annexed to the application for letter of Administration? Briefly give reasons.

#### ANSWER TO QUESTION 3 B

The answer will be different because application for letters of administration with the will annexed is relevant in the following circumstances:

1. The testator must have died testate
  2. The testator must either have:
    - i. Not appointed an executor in the will, or
    - ii. Executor appointed in the will predeceases the testator
    - iii. Executor appointed in the will is an infant
    - iv. Executor appointed in the will is mentally incapable
    - v. Executor appointed in the will renounces probate
- c. Under which circumstances would you have advised the administration of the estate through the Administrator-General?

#### ANSWER TO QUESTION 3 C

Administration of estate through the Administrator-General is necessary in any of the following circumstances:

1. Where there is specific request for the office of the Administrator-General to administer the estate
  2. Where the estate is unrepresented
- d. What is the implication of Taiwo being the only executor of his late father's will? Would his appointment be appropriate if he is a minor?

#### ANSWER TO QUESTION 3 D

It is improper to appoint a single executor as this may result in case where the estate may be without executor, should:

- i. The sole executor predeceases the testator
- ii. The sole executor renounces probate
- iii. The sole executor is incompetent on grounds of age or mental capacity

The appointment of Taiwo would be improper if he is a minor at the time of applying for probate. In which case, letters of administration with all attached will be granted to another person (like the guardian of the minor).

- e. Who is entitled to be granted probate? State the appropriate type for this instant case and highlight the procedure to be followed, bearing in mind the protest of the two brothers of the deceased regarding the will.

**ANSWER TO QUESTION 3 E**

Executor appointed by the testator is entitled to be granted probate, the type of probate to be granted is general, to be re-sealed depending on where the initial grant is made.

The procedure for grant of probate is as follow:

1. The will would be discovered and read
  2. The executors will apply for probate and pay relevant fees
  3. The application will be advertised in the government gazette/newspaper
  4. The son challenging the grant will file a caveat
  5. The applicant is expected to serve a notice of citation on the Caveator
  6. The Caveator will file a notice of appearance to the citation
  7. There will be action in court to determine the objection to the will.
  8. Grant will be made depending on the outcome of the action
- f. Laditi Taiwo, the Solicitor to the family of late Chief Tella, has advised the family to undervalue the properties involved in order for the family to pay less on estate duty to government but more fee to him as their solicitor. How may you view the conduct of Laditi Taiwo the Solicitor in view of his professional duties?

**ANSWER TO QUESTION 3 F**

The Rules of Professional Conduct in the legal profession mandates a legal practitioner to observe the rule of law, not to encourage breach of rule of law. It is professional misconduct to encourage the client to under value the properties involved in the estate – (Rule 1, RPC)



#### QUESTION 4

Mr. Iyide Jones owes a house at 42 Bourdilon Road, Ikoyi, Lagos State and a duplex at Ajeigbe Street, Ring Road, Ibadan, Oyo State. Mr. Iyide Jones has briefed Rafiu Ibom, Esq. to create a lease in respect of his property at Lagos And to deduce title to this duplex at Ajeigbe Ibadan, and complete a mortgage between him and First Bank Plc, the mortgage sum being N40,000,000.00

Mr. Rafiu Ibom, Esq. has negotiated a lease with Mr. Yahaya Tarima in respect of the house at 42 Bourdilon Road, Ikoyi for a period of 60 years with a down payment of five years in advance. The lease shall commence on “the day the Lagos Island Local Government Council issued to the Lessor a Certificate of Occupancy in respect of the house”.

Mr. Iyide Jones though happy that the property at 42 Bourdilon Road is to be leased to Mr. Yahaya Tarima is very concerned about his reversionary interest and is considering having a say about the use of the property, the type of person in occupation at all times, the state of the house when it is handed over at the expiration of the lease and in the case of a fire outbreak, how he could be protected. The lease sum is N5, 000,000.00

Answer the following questions:

- a. (i) What document(s) would you advise Rafiu Ibom, Esq. to produce to deduce title to the duplex at Ibadan?

#### ANSWER TO QUESTION 4 A (i)

Epitome of Title or Abstract of Title, and copies of title documents

- (ii) For how many years should a good root of title date in Oyo State?

#### ANSWER TO QUESTION 4 A (ii)

30 days – S. 70/71 PCL

- (iii) State two places where a search may be conducted in respect of the property at Ibadan?

#### ANSWER TO QUESTION 4 A (iii)

Land Registry and Physical Inspection of the Property

- b. (i) How may a mortgage be created in respect of the property at Ibadan? Assuming the mortgage was in respect of the house in Lagos State, how would the mortgage be created?

#### ANSWER TO QUESTION 4 B (i)

A (Legal) mortgage may be created in Ibadan in any of the following ways –

1. sub-demise
2. charge by deed expressed to be by way of legal mortgage/ statutory mortgage

In Lagos it will be created in any of the following ways

1. Demise
2. Sub demise
3. Charge by deed expressed to be by way of legal mortgage/ statutory mortgage

- (ii) List three rights available to First Bank Plc if Mr. Iyide Jones defaults under the mortgage.

#### ANSWER TO QUESTION 4 B (ii)

Three rights available to First Bank Plc if Mr. Iyide defaults under the mortgage are

1. Power of sale
2. Foreclosure
3. Appointment of receiver

4. Right to take possession
  5. Action in court to recover the principal and interest
- c. (i) State three covenants that Rafiu Ibom, Esq. should insert in the lease to alleviate the fears of Mr. Iyide Jones. Draft the clauses stated.

**ANSWER TO QUESTION 4 C (i)**

1. covenant to insure
  2. Covenant to repair
  3. Covenant against assignment and subletting
  4. User Covenant
- 1. COVENANT FOR INSURANCE**  
*"The tenant/Lessee covenants to insure the demised property against damage or loss by fire for the sum of N1m with XYZ Insurance Company."*
  - 2. COVENANT TO REPAIR**  
*"The Tenant/Lessee covenants to keep and maintain the premises in a good state of repair, against wear and tear excepted and to permit the landlord to enter at reasonable times to view the state of repairs"*
  - 3. COVENANT NOT TO ASSIGN OR SUBLET**  
*"The lessee covenants not to assign, sublets or otherwise part with possession of the demised premises or any part of it"*
  - 4. COVENANT RESTRICTING THE USE (USER COVENANT)**  
*"The Lessee covenants to make use of the premises and to permit the premises to be used for residential only"*

(ii) List four matters to be contained in a covenant to insure.

**ANSWER TO QUESTION 4 C (ii)**

The matters to be included in a standard insurance covenant are

1. Who is to insure
2. The risk against which the property is insured
3. The company with which to insure
4. The amount of insurance cover
5. The application of insurance money

(iii) Assuming five years later Mr. Yahaya Tarima refuses to pay rent on the ground that the lease is invalid because it lacks a commencement date, comment on the validity of this assertion.

**ANSWER TO QUESTION 4 C (iii)**

The commencement date of a lease may be expressly stated or ascertainable from the terms of the lease like an event or a contingency that is bound to happen. In this case, the lease is valid so long as the named event or contingency occurred – **Okechukwu V. Onuorah**

## QUESTION 5

Mrs. Osayi Sule of 5, Obukoko, Sapele, Delta State, who presently runs a guest house in Florence, Italy, wishes to purchase a property at 10, Trans Amadi Road, Port-Harcourt, Rivers State. The property is registered as 42/42/1357 in the Lands Registry, Port-Harcourt. She wants to buy the property because she wants to come back to Nigeria to join a political party and contest for election to the House of Representatives in 2011. She has briefed you to handle the negotiation, purchase and perfection of the title to the property on her behalf. She however wishes to use the property to secure a mortgage of N20million she is negotiating with Access Bank Plc.

The person who wants to sell is Mr. Enafaa George who resides at 5, Aba Road, Port-Harcourt, Rivers State.

A few weeks after Mrs. Osayi Sule briefed you, Mr. Charles Duru came to you to inform you of his interest in and asking that you negotiate the purchase of 10, Trans Amadi Road, Port-Harcourt, Rivers State.

Enafaa George gave Mrs. Osayi Sule the Abstract which she handed over to you. The Abstract revealed as follows:

- i. The land was acquired by Chief Saturday Woluchem from the government of Eastern Region in 1963.
- ii. Chief Saturday Woluchem constructed a one storey building on the land in 1964.
- iii. Chief Woluchem died in 1978 leaving a Will which he devised the house to his twin sons – Valentine and Williams and his daughter, Grace – a minor. He appointed his wife, Mrs. Nehita Woluchem and his brother, Mr. Anthony Woluchem the Executors and Trustees of his Will.
- iv. Chief Woluchem’s Will was successfully proved in 1980.
- v. In December 1993, Valentine bought a house in Garki, Abuja with a loan of N5million he obtained from Afribank, Wuse Branch, Abuja using the house at 10, Trans Amadi Road, Port-Harcourt, Rivers State as security for the loan.
- vi. Valentine died in 1999.

Now answer the following questions:

- a. Draft the document Mrs. Osayi Sule needs to execute in your favour to enable you carry out her instruction to you.

## ANSWER TO QUESTION 5 A

Document required is a power of attorney

BY THIS POWER OF ATTORNEY made this \_\_\_ day of, 2009, I OSAYI SULE (Mrs.) of 5, Obukoko, Sapele, Delta State (referred to as the ‘donor’) HEREBY APPOINT \_\_\_ of \_\_\_ (referred to as ‘donee’) TO BE Y LAWFUL ATTORNEY to do all or any of the following things:

- 1.
- 2.
- 3.

IN WITNESS OF WHICH I HAVE EXECUTED THIS DEED in the manner above the day and year first above mentioned.

SIGNED, SEALED AND DELIVERED BY  
THE ‘DONOR’

\_\_\_\_\_  
OSAYI SULE (MRS.)

IN THE PRESENCE OF:

NAME:

ADDRESS:

OCCUPATION: NOTARY PUBLIC

SIGNATURE/DATE

b. Draft at least four (4) requisitions you will raise on the Abstract submitted to you.

**ANSWER TO QUESTION 5 B**

4 requisitions arising from the case study:

1. What kind of title (interest) was granted by the Eastern Region in 1963?
2. Is Chief Woluchem the same as Chief Saturday Woluchem?
3. Was the gift in the will of Chief Woluchem expressed to be in joint ownership or there were words of severance?
4. Was there any deed of partition?
5. How did Enafaa George get the property?
6. Was the mortgage by Valentine, one of the beneficiaries of 10, Trans-Amadi Road, Port-Harcourt, with the consent of the other beneficiaries?
7. Would the probate of the will of Chief Woluchem be made available?
8. Has the mortgage been discharged?

c. Mention at least five (5) matters to be included in your search report.

**ANSWER TO QUESTION 5 C**

Matters to be included in a search report are as follows:

1. Date of search
2. Place of search
3. Owner of property
4. Nature of interest
5. Whether there is encumbrance
6. Comment by the solicitor

d. What is your professional responsibility in respect of Chief Charles Duru's instructions to you?

**ANSWER TO QUESTION 5 D**

Having been instructed by Mrs. Osayi Sule to represent her in the negotiation for the purchase of the land at 10, Trans-Amadi Road, Port-Harcourt, he needs to disclose the earlier instruction and advise him to seek another solicitor for to do otherwise amounts to breach of professional duty by a solicitor to a client under the Rules of Professional Conduct in the legal profession – R. 17 RPC

e. What are the options open to Access Bank Plc in creating a legal mortgage.

**ANSWER TO QUESTION 5 E**

The options open to the bank in the creation of a legal mortgage is either:

1. A mortgage by sub-demise or
2. Mortgage by assignment; or
3. Legal charge expressed to be by way of statutory mortgage (s.26, CA)

- f. Which option is preferable? Give reasons for your answer.

**ANSWER TO QUESTION 5 F**

On behalf of the bank, the preferred option should be by legal mortgage by assignment. This is because:

1. The bank will have power to transfer the title of the mortgagor where there is default in payment
2. The bank will have the right to retain the original title documents
3. The bank will be able to enforce beneficial covenants in the head lease (if the title of the mortgagor is leasehold)

### QUESTION 6

In November 1995, Mr. Christian Osita bought a bungalow at No.6 Ike Street, Onitsha. The purchase price was N10million. He spent N2million to renovate the roof. In 2005 he paid an Estate Valuer N500, 000.00 to value the property after which he sold the property to Chief Mrs. Eskor for the sum of N30million. He also paid N500, 000.00 for advertising the sale in "The Nation", a daily newspaper with wide circulation in Nigeria.

a. (i) Compute the Capital Gains Tax Mr. Osita will be required to pay.

#### ANSWER TO QUESTION 6 A (i)

**Step 1:** sale of the of bungalow - Cost of bungalow: N30, 000,000- N10, 000,000 =N20, 000,000

**Step 2:** Allowable expenditure

Renovation of roof = N2, 000,000

Payment to Estate Valuer = N500, 000

Advertisement = N500, 000  
=N3, 000,000

Chargeable Gain N20, 000,000- N3, 000,000= = N17, 000,000

**Step 3:** Capital Gains Tax = 10%

10

----- x N17,000,000= N 1,700,000

100

**THE CAPITAL GAIN TAX IS = N 1,700,000**

(ii) What other taxes will Mr. Christian Osita be required to pay in respect of this property?

#### ANSWER TO QUESTION 6 A (ii)

1. Personal Income Tax
2. Stamp duty
3. Registration fees

(iii) List at least 3 types of fees that a Solicitor may charge in respect of property transaction.

#### ANSWER TO QUESTION 6 A (iii)

1. Scale fee
2. Percentage fee
3. Contingent fee

b. Assuming that Ms. Patience Adabor received the purchase price of N30million on behalf of her client after which she paid the Estate Valuer N500,000.00 and spent N500,000.00 for advertising the sale transaction in "The Nation" and N1million for her professional fees.

i. List the items to be included in her Bill of Charge.

#### ANSWER TO QUESTION 6 B (i)

Items to be provided in the Bill of Charges:

1. Lawyer's name and address
2. Client's name and address
3. Date on the bill
4. Principal items charged
5. Particulars of principal items
6. Professional fees charged

7. cost of advertisement
8. Estate Surveyor's fees date incurred
9. Signature of solicitor

- ii. Assuming Mr. Christian Osita refuses to pay Ms. Patience Adabor her professional fees what conditions must be satisfy before she can recover her charges in court?

**ANSWER TO QUESTION 6 B (ii)**

**Step 1**-the legal practitioner prepares the bill of charges

**Step 2**- the legal practitioner signs the bill of charges and if it a firm by one of the legal practitioner in the firm

**Step 3**- it must be served on the client personally, post or at the last known address of the client

**Step 4**-the legal practitioner is to wait for one month

**Step 5**- if the client is in default after one month, then takes a writ of summons at the High Court where the firm operates.

- iii. What is the consequence of Ms. Patience Adabor sending a Bill of Charge to her client without setting out the particulars of the principal items in her Bill of Charge?

**ANSWER TO QUESTION 6 B (iii)**

The court will declare the bill incompetent; oyekanmi v. NEPA