THE LAW OF PROPERTY

Possession and Ownership.

Ownership is property right and signifies title of a property
Possession is mere right to hold property
- Ownership is especially taking 3 ten forms:-
① Sole ② Joint 3 Comm.

1. Sole Ownership

The land in question is owned by one person who exercise right in retention to it.

2. Joint Ownership.

- The property is owned by 2 or more persons with no individual in the property
It is characterised by unitees which are: * unity of title.
* Unity of possession
* Unity of interest
* Unity of time i.e interest commences at the same time.

3. Common Ownership.

- It's ownership of seperate shares in a common land.

Interests on Land

It takes the following forms:- 1. Estates
2. servitude
3. Encumrances. encumbrances

1. Estate in Land.

-It can either be freehold or Leasehold.

- ~~Freehold estate~~ Freehold estate

-It converse right to use land for an indefinate duration. It can be acquired in through the following: i) Purchase of land

ii) Inheritance

iii) Registration after adjudication / court order

iv) Grant eg where gvt gives land to squatters.

v) Prescription - Arises when person takes possession of someone else land for a period of 12yrs.

vi) Ascertain original claim of the land ie acquiring of land by great, great grand grand parents.

Free hold estate include: 1. ~~Free simple~~ Free simple

- ~~Freehold estate~~ 2. ~~Free tail~~ Free tail

- ~~Free Simple~~. Free simple

- It converse unrestricted rights to use & misuse of land.
- There is absolute proprietorship to land.
- There are no conditions attached as to its inheritance
- The holder can commit waste on the land
- The waste may include the following: * Ameliorating improving the value of land.
  * Permissive waste - Acts not detrimental to land.
  * Volentary waste - Acts that are detrimental to land.
  * Equitable waste - Destruction of land.

- Free tail

- It's a freehold estate which converse life interested of the holder & descents only to specified persons.

- Leasehold estate / Tenancy

- Its transaction which creates relationship of landlord & tenants.

Types of Tenancies

1. Fixed - It is created by fixed years
2. Periodic tenancies - It's renewed from time - time e.g. rent.
3. Tenancy at will - It's tenancy which either party may terminate at any time.
4. Service tenancy - It's created to enable the tenant Performed a particular services eg. contract
5. Tenancy at suffereinces - It arises when fixed period of tenancy ends & tenants remains on the land without the landlords consent, Tenants may be ejected anytime.

Characteristics of Tenancies

1. Exclusive possession.
2. Defined Premises - Ascertained promise.
3. certain period.
4. Quantum of rights - Delcee must be given right exercisable

Obligations of Parties

Duties of landlords / leaser / grantors

1. Duty to repair 2. Duty to ensure quiet enjoyment
3. Duty to suspend / adjust rent.
If premises is destroyed without tenants negligence.
4. Duty to put tenant in possession eg giving means
5. Duty 2 ensure premises is fit for purpose
6. Duty not to derogate from the grant

Duties of Tenants

1. To pay rent
2. To pay rates & taxes
3. Duty 2 repair in event causing damages
4. Not to commit waste
5. To notify landlord in the event he comits waste
6. Not to transfer / sublent the property
7. To permit landlord to view the promises
8. To put landlord in possession.

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Termination of Tenancy/Leases

1. By notice ie either party terminates the lease before the duration expires.
2. Lapse of time - A fixed period tenancy terminates on expiration of the duration
3. For forfeiture - Is the ~~l~~ right of the lessee to prematurely terminate the lease if the lessee is bankrupt or winding up.
4. Surrender - The tenant gives up the lease premises and returns them to the land lord.
5. Major - The lessee becomes ~~B~~ entitled to the property as of right.
6. Conversion - Lease hold becomes free hold in accordance with the law.
7. Frustration - e.g destruction of the building which terminates the contract b/n the lessor & the lessee.

2. Servitude

These are rights upon the land of another.
They include the following: Easement
Profit appendre
Licenses
Restrictive covenants.

1. Easement.

It is the right to use the land of another in a particular manner. It also include the right to restrict its use to a particular extend. e.g right of way

Characteristics of Easement

1. There must be a dominant and servient tenement. The person whom the land is used is a servient tenement & person using the land is dominant tenement
2. Dominant and servient tenement must be occupied by different persons
3. Easement must accomodate the dominant tenement.
4. Easement must be capable of forming the subject matter of the grant.

Creation of Easement

1. Statutory authority eg Kenya Power erecting poles of electricity.
2. Express grand. The servient tenement grants the dominant tenement the right over his land.
~~3. Prescript~~
3. Prescription - When the dominant tenement owner uses the land of the servient tenement for over 12yrs he cannot be prevented from continously enjoying his right.
4. Implied grant - This is when the servient tenement allows the dominant tenement to use his land and the servient tenement does not stop him.

Termination of Easement

1. Lapse of time.
2. Major of interest. Is when the servient acquires the land of dominant tenem
3. Breach of contract by the dominant tenement.
4. Discharge / Abandonment by the dominant tenement.
5. Judicial discharge.

2. Profit Appendre.

Is the right to enter upon another's land and take something from it. examples include: Right to fish on another's land.
Right to graze cattle on another person's land.
Right to take soil on another person's land.
Right to plant trees on another person's land.

It may be acquired through the following.
Statutory authority
Express to grand.

3. Licenses

Is the permission to enter into another person's land for agreed purpose.
Can be acquired through: Statutory authory.
Express grand by the owner.

4. Restrictive Covenants

Is the agreement between the purchaser and the seller of land where the purchaser binds himself to use the land in a particular manner.
It binds any subsequent purchaser of the land & therefore the covenant always move on with the land.

5. Encumbrances

Is the putting a burden upon the land owned by another.
The main categories of encumbrances are: Mortgages & charges.

~~Ideas~~ of Mortgage

Mortgagee is the lender
Mortgagor is the borrower.

1. There is conveyance of the title to the mortgagee
2. There is reconveyance on payment.
3. There is the right of redemtion.

Types of Mortgages.

1. Simple mortgage. It is a transaction without delivering possession. The borrower binds himself to pay the mortgagee
2. Legal/English mortgage - The borrower binds himself to repay the mortgage money & transfers the mortgage property to the mortgagee subject to a retransfer upon repayment.
3. Mortgage by conditional sale. The borrower sells the mortgage property to the mortgagee on condition that if he defaults the sale becomes absolute & if he repays the sale becomes void.
4. Usufructuary mortgage - The lender (mortgagee) takes possession of the mortgage property & uses the proceeds to repay himself.
5. Equitable mortgage - The borrower deposits his title deed with the mortgagee without delivering the mortgage property.
6. Anomalous - The rights of the ~~parties~~ property & terms are determined by the mortgagora & mortgagee.

Duties of Mortgagors/chargers.

* To repay the principal
* To pay all taxes & rates
* To repair the premises
* To insure the property
* Not breach the terms of agreement
* Not commit waste on land.

Remedies available to Mortgagee ~~on Mortgagor~~

1. Statutory power of ~~resale~~ resell. They can sell the property if the had given a notice of payment, has not responded.
2. Appointment of a receiver - The receiver is the one who sell the property
3. Foreclosure.- Is a court order which denies The borrower the right of redemption.
4. Suit on sue.- The ~~th~~ mortgager can be sued because of defaulting. He can also sue if The security is destroyed. The borrower ~~that~~ has refuse to deliver the mortgage.
5. Consolidation.- The mortgagee can insist That several charges be redeme together. It can only be possible in the following circumstances
   - The mortgages has been ~~has~~ be executed by The same mortgagor
   - The charges are held by same mortgagee.
   - ~~They a~~ There has been a default in respect to all of them.
   - The security are still in existence.
   - The right to consolidate is expressly reserved by instruments.

Intelectual Property.

It These are rights awarded to individuals over their creative work.
They include: Patent
Trademark
Copyright.

1. Patent

Is a ~~common~~ form of intelectual property that gives its owner the legal rights to exclude others from making, using, selling an invention.

Criteria/standards for Patent.

The idea must be knew/novel
The invention must not be obvious
The invention should be industrially applicable.
The invention should not be excluded by statute.

Right of The Patent owner/Patentee

1. To be granted a patent
2. Exclusive right to deal with The patent
3. To exclude others from dealing with The patent
4. To licence others to deal with the patent
   To receive royalities upon licencing others to deal with the patent.

Obligations of the Patentee.

1. To patent the ideal innovation to disclose all the info. to KIPI.
2. To pay the prescribe fee for innovation.
3. To ~~to~~ give info. pertaining foreign innovation in regard to invention.

Patent infrigement.

Is an unauthorised use with a patented product contrary to the interest of the patentee.

Defenses

1. The idea lack novelty.
2. The idea had not been patented.

Remedies to the Patentee

1. Sue for the damages
2. Injuction
3. Accounts for profit.
4. Delivery up.
5. Criminal sanctions

Compulsory acquisition of parties

This is where the state may order the patent owner to license others to deal with the patent.

Reasons.

1. If the owner cannot ~~cant~~ be able to meet the demand.
2. If Compulsory licensing in public interest. eg health, education etc.
3. The owner has refuse to work out the patent
4. The owner does not ~~the~~ have the capacity to work out the patent.

2. Copyright.

It is the exclusive right given to the creator of creative work ie both artistic and literary work to reproduce the work and exclude others from reproducing that work.

Subject matter of Copyright.

1. Literary work - books, publication, poems
2. Artistic works - designs, drawings, musical works etc.

Standards of Copyright

1. The work must be original
2. The work must have been published.
3. The work should not be obvious.

Copy right infrigement

Is an unauthorised use of another person copyright work.
It is proved upon meeting the following criteria:
1. There should be similarity/plagiarism - Presenting another person's work as if it is yours
2. There must be evidence of access

3. The material should be copyrightable.

Defences

1. Acknowledgement / Referencing.
2. Fair dealing - If one uses the material for private use.
3. Consent from the copyright owner.
4. Public interest

Remedies

1. Injunction
2. Damages
3. Account for profit
4. Delivery up
5. Search and seizure

3. Trademarks

This is use of sale symbol or sign to distinguish the goods or services of the owner from others.

Examples.

1. Smell / olfactory.
2. Name
3. Colour
4. Dimension

Registration Procedure

1. Application for trademark to the registrar
2. The registrar advertises that there is an application for trademarks and invite those who may want to oppose. If there is no opposition within 60 days
3. The registrar register the trademark

Defences in trademark infringement

1. Non-registration of trademark.
2. Non-use of trademark.
3. The trademark is not distinctive.

Remedies

1. Damages.
2. Account for profit
3. Injunction.
4. Search and seizure.
5. Delivery up

Uses of Trademarks

1. To distinguish the goods of one company from the other
2. Identify the origin of the product
3. Use for promotion & marketing
4. It refers to a particular quality.