1. **PURPOSE OF THE COURSE**

To expose students to the concept of property; different types of property; the role of law in regulation of property relations; and the history, legal and institutional framework of land as property.

2. **COURSE CONTENT**

Evolution of property rights, philosophical inquiry into concepts of rights, property, ownership, possession; distinctions between rights in *rem* and rights in *personam*, law of property versus law of obligations, moveable and immovable property; evolution of Kenyan land law and policy; categories of interests in land, content of property rights in land; creation and transmission of rights to land, servitudes and encumbrances; joint ownership, joint tenancy, tenancies in common, community land, private and government land, State regulation of and control of rights and interests in land: Eminent domain and elements of land use law, compulsory acquisition; adverse possession, customary law claims to land; current developments in Kenyan land law: land grabbing and human rights; the 2010 constitution and the regulation of land holding/ownership.

3. **COURSE OBJECTIVES**

This course will:
i. Explore how law regulates relationships among persons in the way in which they acquire, use and transfer resources and cultivate an understanding of the close relationship between property law and the social context.

ii. Introduce students to well-established as well as emerging fields of property law.

iii. Delve into issues such as the concept and theory of property, ownership, possession, different holders of property rights, distinctions between real and intellectual property among others.

iv. Address the state and property rights relationship

v. Trace the origins of the law of property in Kenya

vi. Highlight the Constitutional bases of property law; categories of property rights; gender dimensions in property ownership and matrimonial property.

vii. Equip students with in depth with knowledge and information on land as property; the legal framework governing land tenure in Kenya.

viii. Enable students to appreciate the different interests in land and methods and instruments of transferring these interests.

4. **MODE OF DELIVERY**

   Lectures, seminars, group discussions, tutorials, moot courts, case studies, candidate-led seminars

5. **INSTRUCTIONAL RESOURCES/MATERIALS AND EQUIPMENT**

   Resource persons, text books, hand-outs, video tapes and overhead/ LCD projectors, computers, statutes, law reports, white-boards, white-board markers

6. **COURSE MONITORING AND EVALUATION**

   The following tools shall be used to monitor the course and the course instructor:

   i. Course Registration
   ii. Course attendance lists
   iii. Continuous assessment tests and final examination
   iv. Student/lecturer evaluation
v. ISO Audit Reports
vi. External Examiner’s Report

7. EXPECTED LEARNING OUTCOMES

By the end of the course you are expected to be able to:

i. Explain the legal and other theoretical bases of property
ii. Understand the economic, social, political and legal dimensions of property
iii. Distinguish between the different types of property
iv. Explain the origins, historical development and institutional framework for property law in Kenya
v. Identify, distinguish and define the different categories of property rights in land
vi. Outline how rights in land are created, transferred or otherwise alienated
vii. Explain how rights in land are recorded and administered

8. ASSESSMENT

i. Coursework assessment (CATs/Assignments): 30%
ii. Main Examination: 70%
iii. A student shall not be allowed to sit for the Main Examination if he or she has not sat for all the CATs or missed more than 20% of classes. In any event, results for such Examination shall not be received on record.
iv. Students are expected to participate in class-this shall be taken into consideration while grading.

9. READING MATERIALS

9.1. TEXT BOOKS

xix. *NATALIE CHALIFOUR ET AL, LAND USE FOR SUSTAINABLE DEVELOPMENT* (CAMBRIDGE UNIVERSITY PRESS, 2007)
http://www.ielrc.org/africa/wildlife.php
xxviii. Sara Berry, *No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa* (The University of Wisconsin Press, 1993)


9.2. Select Articles


vii. Patricia Kameri-Mbote, Anne Hellum & Pauline Nyamweya “Pathways to Real Access to Land-Related Resources for Women: Challenging and Overturning Dominant Legal Paradigms”, in Amy Tsanga and Julie Stewart (Eds.), *Women and Law: Innovative Regional Approaches to Teaching*,...


x. Yochai Benkler, “Property, Commons, and the First Amendment: Towards a Core Common Infrastructure”, White Paper for the First Amendment Program, Brennan Center for Justice at NYU School of Law


9.3. GOVERNMENT REPORTS, POLICIES AND PAPERS


iii. The Commission of inquiry into existing land law and tenure systems (Njonjo Commission Report), 2002


9.4. LEGISLATION

i. The Constitution of Kenya, 2010

ii. Land Act No. 6 of 2012

iii. Land Registration Act, No. 3 of 2012

iv. The National Land Commission Act, No. 5 of 2012

v. Community Land Act, No. 27 of 2016

vi. The Sectional Properties Act No. 21 of 1987

vii. The Transfer of Property Act 1882 (Group 8) Laws of Kenya (Repealed)

viii. The Registered Land Act (Cap 300) Laws of Kenya (Repealed)

ix. The Registration of Titles Act (cap 281) Laws of Kenya (Repealed)

x. The Land Titles Act (Cap 28) Laws of Kenya (Repealed)
xi. The Government Lands Act (Cap 280) Laws of Kenya (Repealed)
xiii. The Wayleaves Act, Cap 292 (Repealed)
xiv. The Land Acquisition Act, Cap 295 (Repealed)
xv. The Registration of Documents Act (Cap 285) Laws of Kenya
xvi. The Trusts of Land Act (Cap. 290)
xvii. The Trust Land Act, Cap 288 (Repealed)
xviii. Land (Group Representatives) Act Cap 287 (Repealed)
xix. Land Consolidation Act, Cap 283
xx. The Perpetuities and Accumulation Act No. 6 of 1984
xxi. Physical Planning Act, No. 6 of 1996.
xxii. The Environmental Management and Coordination Act No. 8 of 1999 (EMCA)
xxiii. The Landlord and Tenant (Shops, Hotels and Catering Establishments) Act (Cap. 301).
xxiv. The Rent Restrictions Act (Cap. 296).
xxv. The Urban Areas and Cities Act, No. 13 of 2011
xxvi. The Environment and Land Court Act, Cap 12A

11. COURSE DURATION

The course will take a period of 14 weeks comprised of 3 contact hours per week.

WEEK 1: INTRODUCTION AND CONCEPT OF PROPERTY

1.1. What is property?
   • Different categories of property and how these differ
   • How property differs from contract, tort, etc
   • The attributes of property
   • Role of property in society
1.2. Justification for granting property Rights
   • Why are property rights granted?
   • Theoretical premises for grant of property rights
1.3. Modes of acquisition of property-The concept of possession and ownership (The interplay)

READING:

1. The Concept of Property, Chapter 1 (pg. 2-29) Grant S. Nelson et al, Contemporary Property (American Casebook Series, 1996)


**WEEK 2: CONCEPT OF LAND AS PROPERTY**

2.1. The phenomenon of land

2.2. *Cujus est solum ejus est usque ad coelum et ad inferos* (ownership of airspace and geospace)

2.3. *Quic quid plantatur solo solo cedit* (the doctrine of fixtures)

2.4. Land in economy and society

2.5. Land in indigenous and quasi-religious legal system

2.6. Land in English Common Law

2.7. Statutory Conceptions of Common Law
READINGS


xii. Constitution of Kenya, 2010

WEEK 3: HISTORICAL DEVELOPMENT OF PROPERTY LAW IN KENYA

3.1. Land tenure in the pre-colonial, colonial and post-independence Kenya

3.2. The post-2012 period.

READINGS


2. Smokin Wanjala, *Essays on Land Law: The Reform Debate in Kenya*, Historical Background (Chapters 1, 2 & 3) (Faculty of Law, University of Nairobi, 2000)

19. Land Registration Act, Kenya Gazette Supplement No. 36 (Acts No. 3) 2012

**WEEK 4: CLASSIFICATION OF PROPERTY RIGHTS IN LAND AND THE DOCTRINE OF PROPRIETORSHIP IN LAND**

4.1. Classification of property rights in land - “specie” and “quantum”
4.2. Categories of Land rights and interests:
  - Estates-Absolute, Freehold and leasehold estates
  - Tenancy-tenancy in common; Joint Tenancy and Tenancy by entirety

11 | Page
• Servitudes- Easements, Profits, Restrictive agreements and Licences
• Encumbrances-charges and mortgages

4.3. Land tenure issues
4.4. Estates
4.5. The Doctrine of Proprietorship and the Concept of Proprietorship
• Various Modes of Proprietorship: Freehold Titles, Leasehold Titles and Absolute Titles
• The incidents of Concurrent Proprietorship
• The Incidents of Consecutive Proprietorship and the Problem of Perpetuities
• The Incidents of Sectional Proprietorship (i.e., Condominiums and Time-Share)

4.6. Distinguishing private, public and communal land

4.7. Derivative rights

READNGS

5. The Constitution of Kenya, 2010
6. The Trust of Land Act (Cap. 290)
7. The Perpetuities and Accumulation Act No. 6 1984
10. Land Registration Act, Kenya Gazette Supplement No. 36 (Acts No. 3) 2012
11. The Registered Land Act (Cap. 300)

WEEK 5: STATE REGULATION OF PROPERTY RIGHTS IN LAND

5.1. The Social and Political Bases of Regulations
5.2. The Doctrine of the ‘dominium eminent’ [Eminent Domain]
5.3. The Doctrine of the Police Power
5.4. Community-Based Regulatory Mechanism
5.5. Public trust doctrine
5.6. Environmental imperatives
5.7. Institutional arrangements (National Government/Ministry of Lands, National Lands Commission, County Governments, NEMA, Environment and Land Court etc)

READINGS

2. Yochai Benkler, “Property, Commons, And The First Amendment: Towards A Core Common Infrastructure”, White Paper For The First Amendment Program, Brennan Center For Justice At NYU School Of Law
5. The Constitution of Kenya (Sections 75, 117 – 118)
7. John Peter Mureithi & Two Others V. Attorney General & 4 Others 2006 eKLR
8. James Joram Nyaga & Another V. Attorney General & Another 2006 eKLR
9. Peter Waweru V. The Republic, High Court Of Kenya At Nairobi, Miscellaneous Civil Application No. 118 Of 2004
10. Park View Shopping Arcade Limited V. Charles M. Kang’ethe And Others, Civil Suit No. 438 Of 2004
11. Coastal Aquaculture Ltd. V. Commissioner Of Lands Mombasa High Court Misc. Civil Suit No. 169 Of 2000

WEEK 6: COMMUNITY LAND

6.1. What is community land?
6.2. What are community rights? What are Community Land Rights?
6.3. Community property rights in historical perspective
6.4. Management of Community Land Rights; Legal regime
6.5. Tenets of a Community Land Legislation in Kenya
6.6. Legal protection of community land rights
Readings


WEEK 7: PUBLIC LAND & CAT 1

7.1. Meaning of public land
7.2. Administration and management of public land
7.3. Leases, Licenses and Agreements for Public Land
7.4. Conversion & Allocation
7.5. Guidelines for Management
7.6. Conservation
7.7. CAT 1

Readings:
10. Land Registration Act, Kenya Gazette Supplement No. 36 (Acts No. 3) 2012
11. Ndungu Land Commission

WEEK 8: PRIVATE LAND

8.1. Meaning of private land
8.2. Administration and managements of private land
8.3. Contracts
8.4. Transfers & Transmissions
8.5. Leases
8.6. Charges/mortgages
Readings:

ix. Land Act, Kenya Gazette Supplement No. 36 (Acts No. 6) 2012
x. Land Registration Act, Kenya Gazette Supplement No. 36 (Acts No. 3) 2012

**WEEK 9: FREEHOLD**

9.1. Definition and nature
9.2. Land registration and the Torrens System
9.3. Types of freehold (compare common law to statute)
9.4. Absolute proprietorship (AP)
9.5. Content
9.6. Overriding interests
9.7. The impact of registration of land on customary rights (*positivist, equitable and trust* approaches)

**Readings:**
- ss 24-26, 28 LRA
- Ojienda, pp. 114-126

**CASES**

Positivist/Rigid approach
- *Belinda Murai v Amos Wainaina* CA No. 40/1997

Liberal/Equitable/Flexible approach
- *Misheck v Priscilla Wambui* Civil Case No. 144/1973
• *Mwangi & Another v Mwangi* [1986] KLR 328 – case between brothers

**Trust approach (English or customary trust?)**

**Main cases**

• *George Njunge v Raphael Njunge* HCCA 578/2007 – case between brothers
• *Philomena Wangari & 2 Others v Maria Njeri Chege* [2005] eKLR – case between sisters
• *Mukangu v Mbui* [2004] 2 KLR 256
• *Mumo v Makau* [2004] 1 KLR 13

**Page 6 of 8**

**Additional cases**

• *Florence Kaburu Muthike v Klburi Maria & Anor* [2017] eKLR
• *Marigi v Marigi & 2 Others* [1997] eKLR
• *Muguthu v Muguthu* HCCC No. 337/1968 – case between brothers
• *Edward Limuli v Marko Sabayi* HCCC No. 222/1978
• *Allan Kiama v Ndia Mathunya & Others* CA No. 42/1978
• *Kanyi v Muthiora* [1984] KLR 712
• *Muthuita v Wanoe* (1976-1985) EA 334 or [1985] KLR 166
• *Gathiba v Gathiba* [2001] 2 EA 342
• *Karanja Kariuki v. Kariuki* (1983) eKLR
• *Mani v Mani* HCCC No. 34/1972

N/B: The strategy here is to focus on the latest cases from www.kenylaw.org i.e.:

• *M’Inanga v M’Lintari* [2015] eKLR (SC) – concept of intergenerational trust
• *Anthony Otiende v. PSC, Sarah Mwenda & CS, Ministry of Housing, Land & Devt,* [2016] eKLR: Does NLC have mandate on registration/signing of titles?

**WEEK 10: LEASEHOLD**

10.1. Definition and essentials of a valid lease
10.2. Categories of leases/tenancies
10.3. Effect of non-registration of registrable leases
10.4. Rights and duties under the landlord/tenant relationship: Implied covenants under ss. 65/66 *Land Act*

| (i) | In respect of the Landlord |
| (ii) | In respect of the Tenant |

10.5. Remedies under the Landlord/Tenant relationship i.e. enforcement of the rights and duties under (d) above (ss. 73-77 LA)
10.6. Transfer of the leasehold estate: Assignment and Sub-letting (ss. 69-72 LA)
10.7. Determination/termination of leases

**Readings**

• *Art. 65 CoK*
• *s 2 LA + LRA*
11.1. Charges and mortgages as commercial securities
11.2. Definition, statutory bases & distinctions between charges and mortgages
11.3. Types of charges
11.4. Manner of creation (s. 56 LRA)
11.5. Protection of the chargee/mortgagee
11.6. Protection of the chargor/mortgagor and the matrimonial home
11.7. Remedies of the chargee and chargor

Readings
i. ss. 2, 79 LA, ss. 80, 84 and 85 LA, Part VII of the LA, Part V of the LRA
ii. Snell’s Equity (London: Sweet & Maxwell, 2000), Part IV
iii. Ojienda, pp. 163-214
iv. Onalo, pp. 127-154
v. Maini, pp. 228-238


ix. Santley v. Wilde [1899] 2 Ch 474


xiv. Vernon v. Bethel (1862) Eden 1


xvi. Knightsbridge Estates Trust Ltd v. Byrne [1940] AC 613


xviii. KCB v. James Osebe [1982] LLR 66 (CAK)

xix. James Ockotch v EABS [1996] LLR 468 (CAK)

xx. Mbutia v Jimba Credit [1986] LLR 3292 (CAK)

xxi. Trust Bank v Eros Chemists [1999] LLR 1008

xxii. HFCK v. Givan Ingari & Anor. HCCC 629/06 Nai.

xxiii. Gerald Okech Onyango v. BBK [2008] eKLR

xxiv. Ooko v BBK [2002] 2 KLR 394

xxv. James Kabathi Mwangi t/a Tangerine Auto Hardware v. KCB [2007] eKLR


xxvii. Lucas Njuguna v. Consolidated Bank Ltd. HCCC 11/2006 - Milimani, etc

Page 5 of 8


xxix. BBK Ltd v. AG, Judith Muok Atieno (Interested Party) ELC 369/2013 – s. 78 LA Retrospectivity of Part VII


xxxi. Pelican Investment v National Bank [2000]2 EA 488 (CCK) cf: s. 84 LA on variation of interest rate.

**WEEKS 12: SERVITUDES AND SECONDARY PROPERTY INTERESTS**

12.1. Easements
12.2. Profits
12.3. Restrictive agreements (RA)
12.4. Licences
Readings
• s. 2 LA/LRA – definitions

19 | Pa ge
Part X of the LA
Part X of the LRA
S. Wanjala, Land Law & Disputes in Kenya, pp. 28-30
Maini, pp. 239-248
Tom Ojienda, Land Law & Conveyancing: Principles and Practice, pp 135-139

Cases:
Kamau v. Kamau [1984] 1 KLR (E & L) : creation of easements
Re Ellenborough Park [1955] 3 All ER 667: characteristics of easements. See also Copeland v Greenhalf [1952] Ch. 488; Hill v Tupper (1863) 2 H & C 121
Mtaita v Ngoiya [2008] 1 EALR (CAT) 229 : easements
Brooke Bond (K) Ltd v James Bii [2013] eKLR : easement of access to water/river
Tulk v Moxhay (1848) 41 ER 11431 : RA binding on successive owners
Inwards v Baker [1965] 2 QB 29 : licence
Runda Coffee Estates v Ujagar Singh [1966] EA 564 : lease-vs-licence (See Onalo, p. 166 for facts)
Case v Ruguru [1970] EA 70: The question was whether the Defendant was a wife, trespasser or licensee. The court granted an injunction against her for trespass.

WEEK 13: COMPULSORY ACQUISITION OF LAND
13.1. Meaning
13.2. Constitutional and statutory basis
13.3. Procedure
13.4. Settlement schemes
13.5. Case law

Readings:
10. Land Registration Act, Kenya Gazette Supplement No. 36 (Acts No. 3) 2012
15. Satrose Ayuma and Others Versus Registered Trustees of Kenya Railways Staff Benefit Scheme and Others Petition No. 65 of 2010
16. Limo v. Commissioner of Lands [2006] 1 KLR (E&L) 175
17. Commissioner of Lands & Another v. Coastal Aquaculture Ltd. [2006] 1 KLR (E&L) 264
18. Re Kisima Farm Ltd [1978] KLR 36

WEEK 14: CONTEMPORARY/EMERGING ISSUES IN PROPERTY LAW & CAT 2

14.1. Environmental Easements
14.2. Spectrum space
14.3. Interface between land and intellectual property
14.4. Foreigners land-holding in Kenya
14.5. Contentious Land Issues requiring special intervention - Family land, Land ownership by minors, Matrimonial property, Community land, pastoral land, Coastal land problems, vulnerable groups, minorities,
14.6. Disaster Management; Refugees and Internally Displaced Persons and Refugees.
14.7. CAT 2

Readings:
  iv. John Moore, Plaintiff and Appellant Versus The Regents of the University of California & Others
vi. Art. 65 CoK  

vii. s. 6 Matrimonial Property Act, 2014  

viii. s. 47 LRA  

ix. s. 93 LRA  

x. Parkire Stephen Munkasio & 14 Others (suing on their own behalf and of their families and all the members of the Maasai Community living in Kedong) v Kedong Ranch Limited & 8 Others [2015] eKLR - community land dispute  

xi. Patricia Kameri-Mbote et al, Ours by Right: Law, Politics and Realities of Community Property in Kenya (Strathmore, 2013)  


xiii. Collins Odote, “The Legal and Policy Framework Regulating Community Land in Kenya: An Appraisal” (FES, Nairobi) on file with Lecturer  

xiv. Local Content Bill, 2016  

xv. NLP 3.6.4  


xvii. Mwangi & Another v Mwangi [1986] KLR 328  

xviii. Philomena Wangari & 2 Others v Maria Njeri Chege [2005] eKLR  

xix. Rono vs Rono and Another [2005] 1 EA 363  
