THE OPEN UNIVERSITY OF TANZANIA

FACULTY OF LAW

OLW 203 LAND LAW

This outline indicates only the minimum essential readings. Students are advised to consult other readings.

The following are prescribed as basic text books:-

1. James, R. W. (1971), Land Tenure and Policy in Tanzania, East African Literature Bureau, Nairobi, 1971.

2. James, R. W., and G. M. Fimbo (1973), Customary Land Law of Tanzania, A Source Book, East African Literature Bureau, Nairobi, 1973.

3. Fimbo, G. M. (1992) Eassays in Land Law, Tanzania, printed by the Dar es Salaam University Press, 1992.

4. Riddal, J. G. (1983), An Introduction to Land Law, Third Edition, Butterworths, London, 1983.

5. MEGARRY's Manual of the law of Real Property, Sixth Edition, Stevens & Sons, London, 1982.

A. AN INTRODUCTION TO THE LAND LAW OF TANZANIA.

SECTION 1: Land Law Teaching and Learning; Sources of Land Law.

A. Land Law Teaching and Learning.
Tension between, on the one hand, freedom to deal with land in the market and, on the other, protection for the users and occupiers of land.

Barclays Bank Plc v. O'Brien [1993] 4 All ER 417, HL.

Lloyds Bank Plc v.Rosset [1992] 2 WLR 867
Mtumwa Rashidi v. Abdallah Iddi & Another Court of Appeal of Tanzania at Dar Es Salaam. Civil Appeal No. 22 of 1993.

Report of the President Commission of Inquiry into Land Matters, 1992 National Land Policy, 1995.

B. Source of Land Law

Land Act No. 4 of 1999 ss.180, 181, 182, 183; Village Land Act, No. 5 of 1999 s.20.

1. Written Law-Ordinances and Acts of Parliament
   Judicature and Application of Laws Ordinance, Cap. 453.
   Land (Law of Property and Conveyancing) Ordinance, Cap 114.

2. Customary Law
   Tanganyika Order in Council, 1920 article 24.
   Land Ordinance, Cap, 113 Section 2, 13.
   Land (Law of Property and Conveyancing) Ordinance, Cap, 114 sections 16.
   Judicature and Application of Laws Ordinance Cap. 453 section 9.
   Land Act No. 4 of 1999, s.180;
   Village Land Act. No. 5 of 1999 s.20.

3. Islamic Law.
   Judicature and Application of Laws Ordinance Cap. 453 section 9.
   Land (Law of Property and Conveyancing) Ordinance, Cap. 114 section 16.

4. English Law – Common Law, doctrines of equity and statutes of general application.
   Land (Law of Property and Conveyancing, Cap. 114 section 2.
   Judicature and Application of Laws Ordinance, Cap. 453 section 2.
   Land Act, No. 4 of 1999 s.180.

5. Indian Laws.
   Indian Laws (Application) Ordinance Cap.2.

SECTION 2: Economy and Society in the Pre-colonial period. Modes of production:- pastoral mode, village community or communal mode of production and feudal mode of production

References:

Kjekshus, H. (1977), Ecology, Control and Economic Development in East African History, The Case of Tanganyika, 1850-1950, Heinemann, London 1977.
Corry, H., (1955), Report on Nyarubanja System in Bukoba, 1955. Reining, Priscilla C., (1962) Haya Land Tenure: Land Tenancy, Anthorpological Quarterly, Vol. 35/2 (April 1962).

Rweyemamu, J. F., (1973), Underdevelopment and Industrialization in Tanzania, A Study of Perverse Capitalist Industrial Development, Oxford University Press, Nairobi, 1973.

SECTION 3 : Colonialism

A. German Rule 1984 – 1918.
Establishment of German administration – declaration of land as Crown land.
Plantation agriculture – grants of land to white settlers of 'Conveyance of ownership and 'leaseholds'. Peasant cultivation – 'a Nyamwezi and peanut policy'.

References:

Illiffe, J., (1971), Agricultural change in Modern Tanganyika, an Outline history East African Publishing House, Nairobi, 1971.

Illiffe, J., (1973), Tanganyika Under German Rule, 1905-1912, East African Publishing House, Nairobi, 1969, reprinted 1973.

Imperial Decree regarding Creation, Acquisition and conveyance of Crown Land and regarding the Acquisition and Conveyance of Lands in general in German East Africa published on 26/11/95.
Instructions regarding the carrying out of the Imperial Chancellor, published on 27/11/95. Ordinance by the Governor regarding the application and carrying out of the Imperial Decree of 26 November, 1895, regarding Creation, Acquisition and Transfer of Land in G. E. A., and rules thereunder by the Imperial Chancellor dated the 27 November 1895 published on 4/12/96.

B **British Rule 1918-1961.**

1. Plantation agriculture, confirmation of German alienations and establishment of new plantations-export crops.

Tanganyika Order in Council 1920.
Enemy Property (Disposal) Proclamation 1920.
German Property (Liquidation) Ordinance 1921, No. 42 of 1921.
Land Ordinance 1923, No. 3 of 1923
Land Registry Ordinance 1923, No. 15 of 1923, Cap. 70 of the 1928 Revised Laws of Tanganyika.

Labour supply – proper crop husbandry – increased production crops – internal marketing system – agricultural credit.
Sisal Industry Ordinance 1928 No. 2 of 1928.

Sisal Industry Ordinance 1945, No. 15 of 1945 Cap. 143 Laws of T. 1947.
Tobacco (Non-Native Industry) Ordinance 1941 No. 17 of 1941 Cap. Laws of T. 1947.
Tobacco (Non-Native Industry) Ordinance 1941 No. 17 of 1941 Cap. 149 Laws of T. 1947.
Crops (Increased Production) Ordinance 1944, No. 1 of 1944 Cap. 151 Laws of T. 1947. Master and Native Servants Ordinance 1923, No. 32 of 1923.
Hut and Poll Tax Ordinance 1922, No. 12 of 1922 Cap. 63 Laws of T. 1928
Native Tax Ordinance 1934 No. 20 of 1934 Cap. 1836 Laws of T. 1947.
The Land Bank Ordinance 1947 No. 47 of 1947.

Application of English Law.

The Land (Law of Property and Conveyancing) Ordinance 1923, No. 2 of 1923, Cap. 114

Cases:

Land Officer V. Motor Mart and Exchange (1953-1957) 2 TLR 295.
A. G. v Motor Mart and Exchange (1960) E. A. 689.

References:

James (1971), Chap. 2 Section 1
Seidman, R.B. (1964) The Reception of English Law in Colonial Africa, E. A. L. R. Vol. 2 No. 1 (1964) 47.

(b) Some concepts, Principles and Institutions of Received Law

1. Definition of "Land".

   Conveyancing and Law of Property Act 1881 (44 & 45, C.41), (U.K.), s2(ii)

   Land, unless a contrary intention appears, includes land of any tenure, and tenements and hereditaments, corporeal or incorporeal and houses, and other buildings, also an undivided share in land.

Interpretation Act 1889, U.K. states inter alia, "the expression land shall include messages, tenements, houses, buildings of any tenure."

Fixtures: Note the maxim quicquid plantatur solo solo cedit. The tests as to whether a chattel is in fact a fixture are: the degree of annexation and the purpose of annexation.

Mines and Minerals

At common law mines and minerals below the surface of the earth go with the ownership of the soil above them. But gold and silver are vested in the crown by virtue of Royal Prerogative. In Tanganyika the colonizers vested all mines and minerals in the state.

Mining Ordinance Cap. 125, s.3. Mining Act, No. 5 of 1998.

Cases

Commonwealth v. N.S.W. 1923. 33 C.L.R.I.
Moody v. Steggles (1879) 12 Ch.D.261
Virji v."Abdulrahman (1950) 24 KLR 24.
Shaw v. Devshi (1923) 17 KLR 20.

Reference:

Morton, A.L. (1976), A People's History of England, Lawrence & Wishart,London, 1976.

Classification of Land.

English Common Law divides property into real and personal. The reasons for this classification are historical. Civil Law divides into movable and immovable.

References:

James (1971) Chap. 2 Section 2.
Meggary (1982) Chaps. 1 and 2.

Simpson, A. W. B. (1961), An Introduction to the History of the Land Law, Oxford University Press, London 1961, Chaps. 1-4.

Tenures and Estates

Lord and Tenant – Services – Time – Basic doctrines. Tenures-extinct Tenures-modern tenures. Estates-fee simple-fee tail-life estate.

II. **Peasant Production.**

New cash crop area – supervision by commodity boards – by – laws – agricultural credit – internal marketing system – prices monopolistically fixed – rural stratification.

Land (Amendment) Ordinance, 1928, No. 7 of 1928. Customary land rights.

Customary Tenure Through Case Law – Court's articulation of customary tenure.

In re Southern Rhodesia [1919] AC 211.
Amodu Tijani v. The Secretary, Southern Nigeria [1921] 2 AC. 399.

Muhena bin Said v. Registrar of Titles (1948) 16 EACA 79.
Mtoro bin Mwamba v. A-G (1953) 2 TLR 327, C.A., James and Fimbo (1973): 8.
Descendants of Sheikh Mbaruk bin Rashid v. Minister for Lands and Mineral Resources (1960) E. A. 348, James and Fimbo (1973): 389.

Hon. Attorney, General v. I Lohay Aknonaay 2. Joseph Lohay, [1995] TLR 80.

Reference:
James and Fimbo (1973) Chaps. 1,3,10,11,13,16.
Boards.
Native Coffee (Control and Marketing) Ordinance, 1937 No. 26 of 1937.
Native Tobacco (Control and Marketing) Ordinance, 1940 No. 39 of 1940.
Africa Agricultural Products (Control and marketing) Ordinance 1949, No. 57 of 1949 Cap. 284, 1947-1949 Laws of T.
Tea Ordinance, 1950 No. of 1950.
Lint and Seed Marketing Board Ordinance, 1952, No. 11 of 1952.
Co-operative Societies Ordinance, 1932, No. 7 of 1932.

Agricultural credit to the peasant sector.

Local Development Loan Fund, 1947.
African Productivity Loan Fund, 1955.

Bulk Loans.

Credit to Natives (Restriction) Ordinance, 1923, No. 6 of 1923.
Credit to Natives (Restriction) Ordinance, 19312, No. 16 of 1931.

Attempt at individualization of land ownership in the peasant sector.
Precapitalist / customary tenure in England, feudal tenure basis of English Land Law –Capitalism-individual ownership of land.

References

Allot, A. N. (1961), Towards a Definition of Absolute Ownership, 1961 JAL 99. Reproduced in Cotran, E., and Rubin, (1970) Eds. Readings in African Law, Frank Cass & Co. London, 1970: 264-270.
East African Royal Commission Report 1955, cmnd, 1475: 346-358.

SECTION 4: Independence and After.

Support for the plantation system and peasant production-controlled internal marketing system – commodity boards authorities – co operative societies as agents – producer co-operatives – confronting settler farmers – development of the state sector in agriculture customary tenure conversion.

1. **Land Tenure Reform in the Plantation Sector**

(a) Conversion of freehold titles into government leases, coversion of government leases into rights of occupancy.

Land (settlement of Disputes) Act, 1963, No. 25 of 1963 Cap. 524, James and Fimbo (1973): 35.
Freehold Titles (Conversion to Government Leases) Act 1963, No. 24 of 1963 Cap. 523. Government Leaseholds (Conversion to Rights of occupancy) Act 1969 No. 44 of 1969.

Land (Rent and Service Charge) Act 1974 No. 19 of 1974, repealed by Act No. 19 of 1982.

(b) Acquisition of Farmlands
Specified Coffee Estates (acquisition and Regnant) Act 1973, No. 31 of 1973.
Specified Sisal Estates (Acquisition and Regnant) 1974 No. 11 of 1974.
Rural Farmlands (Acquisition and Regnant) 1974 No. 11 of 1974.
Rural Farmlands (Acquisition and Regrant) Act 1966 No. 8 of 1966 as amended by Acts Nos. 30 and 53 of 1966.

(c) Development of the State Sector in agriculture.
Tanzania Sisal Corporation (Establishment and Vesting of Interest) Act 1967 No. 39 of 1967.
National Agricultural and Food Corporation (Establishment) Order 1969, G. N. 89 of 1969.
Tanzania Sisal Industry Act 1973 No.. 2 of 1973.
District Corporations Act 1973 No. 16 of 1973. /
Sugar Development Corporation (Establishment) Order 1974 G. N. No. 44 of 1974.

II. Peasant Sector

Tension between Customary Tenure and the Granted Right of occupancy.

Cases:
NAFCO v. MULBADAW VILLAGE COUNCIL & OTHERS [1985] TLR 88.

METHUSELAH PAUL NYAGWASWA v. CHRISTOPHER MBOTE NYIRABU [1985] TLR 103.

YOKE GWAKU v. NAFCO High Court of Tanzania at Arusha, Civil Appeal No. 52 of 1988 (unreported).

Land Act, No. 4 of 1999 ss 34(3), Village Land Act, No. 5 of 1999. S.18. Customary Tenure in Urban areas.

Government circular No. 4 of 1953.

METHUSELAH PAUL NYAGWASWA v. CHRISTOPHER MBOTE NYIRABU [1985] TLR 103.

SUZANA KAKUBUKUBU v WALWA JOSEPH KASUBI, Court of Appeal of Tanzania at Mwanza, Civil Appeal No. 14 of 1991 (unreported).

MWALIMU OMARI v. OMARI A. Bilali, Court of Appeal of Tanzania at Dar Es Salaam, Civil Appeal No. 19 of 1996 (unreported).

Land Act No. 4 of 1999 sections 56-60-;
Application of Customary Law to dispute relating to urban Land

SCHOLARSTICA BENEDICT v. MARTIN BENEDICT, Court of Appeal of Tanzania at Mwanza, Civil Appeal No. 26 of 1988 (unreported).

MOHAMED NYAKIOZE v. SOFIA d/o MUSA (1971) HCD n.413.

Magistrates' Courts Act, No. 2 of 1984 Section 63 on Jurisdiction of the Primary Court.

FRANK MAREALLE v. PAUL K. NJAU E. [1982] TLR 632.

ARUSHA MUNICIPAL COUNCIL v. LYAMUYA CONSTRUCTION CO. Ltd Court of Appeal of Tanzania at Arusha, Civil Appeal No. 25 of 1989 (unreported).

PIUS MASSAWE v. SIMON RAPHAEL Court of Appeal of Tanzania at Arusha, Civil Appeal No. 14 of 1988 (unreported).

TITO SATURO AND & OTHERS v. MATIYA SENEYA & 4 OTHERS, Covet of Appeal of Tanzania at Arusha, Civil Appeal No. 26 of 1989 (unreported).

Application of Islamic Law of disputes relating to land.

SEC. OF STATE OF FOREIGN AFFAIRS v. CHARLES WORTH LLING & Co. [1901] AC.373.

Customary Tenure Conversion.

Reaction to the E.A. Royal Commission-recommendations on individualisation of African lands.
Improvement approach and Transformation approach. Leasehold enfranchisement.

a) **Village settlements**.
Land Tenure (Village Settlements) Act 1965 No. 27 of 1965 James and Fimbo (1973) p.103.

b) Ranch lands
Range Development and Management Act 1964, No.51 of 1964, James and Fimbo (1973) p.133.

c) **Villages and Ujamaa Villages**.
Villages and Ujamaa villages (Registration, Designation and Administration) Act 1975, No. 21 of 1975.
Local Government (District Authorities) Act 1982 No. 7 of 1982.
Rural Lands (Planning and Utilization) Act 1973 No. 14 of 1973.
GN. No. 88 of 1987.

The Tanzania National Agricultural Policy – Final Report, 1982.
The Tanzania Government Agricultural Policy 1983.
Regulation of Land Tenure (Established Villages) Act 1992 No. 22 of 1992.
Report of the Presidential Commission of Inquiry into Land Matters, November, 1992.
National Land Policy, June, 1995.

d) Leasehold enfranchisement
Nyarubanja Tenure (Enfranchisement) Act 1965. No. 1 of 1965.
Customary Leaseholds (Enfranchisement) Act 1968, No. 4 of 1968.

Cases

Anyitike Mwatujobe v. Wim Mwakasugule (1976) LRT n. 5.
Lydia Seme v. Obasit Kipange (1977) LRT.n. 17.

References

Gondwe Z. S. (1985) Agricultural Policy in Tanzania at Crossroads, Land Use Policy, December 1985 (UK).
Gondwe, Z. S. (1991) Private Foreign Investment in Tanzania: Land Tenure Considerations, African Journal of International Compartive Law, March 1991, Vol. 3 pt. 1.
Godwe, Z. S. (1993) Agricultural Law in Tanzania-Time for Reckoning Journal of Economic Reflections Vol. 1 No. 2 December, 1993.
Tenga, R. W. (1987) Land Law and The Peasantry in Tanzania: A Review of the Post-Arusha Period, Eastern African Social Science Research Review of the Post Arusha Period, Eastern African Social Science Research Review 3 (1): 38-61.

Conversion of Customary Tenure in other countries

Kenya
Land Adjudication, Consolidation and Registration

References:
Land Consolidation Act Cap. 283.
Land Adjudication Act 1968, No. 35 of 1968 (which changes the title of Cap. 283 to “Land Consolidation Act”).
Registered Land Act, Cap.300.

Uganda
Crown Lands Adjudication Rules, 1958, L.N. 258/1959 repealed and replaced by the Public Lands (Adjudication) Rules, 1967, S.I. 39 of 1967.
Registration of Titles Act Cap. 2154.
Land Reform Decree 1975, Decree No. 3 of 1975.
Land Act, 1998 No. 16 of 1998.

Reference:
Lawrence, J.C.D. (1960), A Pilot Scheme for Grant of Land Titles in Uganda. (1960) 12 JAA: 135.

Papua New Guinea.
Reference:

Bredmeyer, T. (1975), The Registration of Customary Land in Papua New Guinea, Melanesian Law Journal, Vol. 3 No. 2 (October 1975): 267-287.

III. CUSTOMARY LAND RIGHTS IN TANZANIA

A. Scope of Customary Tenure
Village Land Act, No.5 of 1999 Section 18.
Land Act No. 4 of 1999 Section 6.

(i) 'Specified area' under the Rural Lands (Planning and Utilization) Act, 1973, No. 14 of 1973.

(ii) Forest Reserves.
Forest Ordinance, 1957, Cap. 389.
Fauna Conservation Ordinance, 1951, Cap. 302.
Peter Mashauri v. Rep. James and Fimbo (1973): 47.

(iii) Preserved Areas.
Public Lands (Preserved Areas) Ordinance, 1954, Cap. 338.
Abdallah Chapila v. Mwigoha & Others, James and Fimbo (1973): 54.

Games Reserves
Lakengere Faru Parutu Kamunya v. Minister for Tourism, Court of Appeal of Tanzania at Arusha, Civil Appeal No. 53 of 1998 (unreported).

B. Acquisition of Land Rights

Allocation Clearing virgin forest-purchase-Gifts.

(i) Allocation by local land authority.

Abbi v. Matle (1971) HCD. N. 341.
Medadi v. Name (1971) HCD. N. 333.
Mtongori Nyamagaini v. Richi, James and Fimbo (1973): 564.
Kitambi v. Makambi (1972) HCD. N. 15.

(ii) Clearing virgin Forest.
Rashidi bi Ali v. Bakari bin Kayanda, James and Fimbo (1973): 298.

(iii) Purchase.

Jafenia s/o Shimba v. Musuka s/o Nyanda (1968) HCD. No. 10
Stephania Byabato v. Francia Lwehabura & Anor. (1974) L.R.T. n. 25.
Mohamed Tiwilukwa v. Kalokora, James and Fimbo, (1973): 310.
Leonsia Balyagati v. Samueli Maganga (1978) L.R.T. n.5.
Kabachwezi v. Abdallah & John (1971) HCD n. 273.
Mwehela Kibungo v. Mudabe Muhungula (1969) HCD. N. 274.
Fulgence Seif v. Raphael Rwabwera & Anor. (1978) L.R.T. n. 46.

(iv) Gifts of land

Herbert Rugizibwa s/o Ruhorana v. Mushumbuzi s/o Mwezi, James and Fimbo (1973): 312.
Thomas Salewi v. Issa Kirari (1970) HCD N. 116
Stephen Sokoni v. Million Sokoni (1967) HCD N. 46, James and Fimbo (1973): 257.
Lekasio v. Lekasio (1970) HCD. N. 238.
Mohamed Yusuf v. Tunda Binti Kassim (1973) L.R.T. N. 67.
Administrator – General Zanzibar v. Kusam Fadhil Mussa and 5 others (1969) HCD. N. 80.

(v) **Rights of owners of riparian farms.**

Ali Shomari v. Salum Kikira (1973) L.R.T. N. 61: (1974) E.A. 137.
Ibrahim Lihoba v. Saidi Meda (1967) HCD. N. 230: (1967) HCD. N. 230; (1967) E.A. 69; James and Fimbo (1973); 89.
Lyall, A. B. (1968) The Case of the Movable Land, E.A.L.R. Vol. 1 No. 1 (April 1968) 95-100. (case note).
Amiri Ludongo v. Hija Gamba, (1968) HCD.N. 497, James and Fimbo (1973); 87.

C. SUCCESSION

Testate succession and Intestate Succession – Disinheritance of heirs – Internal Conflict of Laws.

Land Ordinance Cap. 113, s. 13.
Local Customary Law (Declaration) No. 4) Order of 1963, G.N. No. 436 of 1963, 2nd Sch: Rules of Inheritance. Rules 21, 22, 23, 25, 30, 39, James and Fimbo (1973): 168-169.

DIDAS RWAKAKILE & 3 others v THOMAS MATONDANE [1992] TLR 314

Partition of inherited land.

Robert F. Lugakingira v. Leonard F. Lugakingira, (1967) HCD N. 163. James and Fimbo (1973): 183.
Clementina Tikengwa & Anor. V. Traseas Kabwogi (1978) LRT. No. 49.

Disinheritance: Rules 36 and 37, James and Fimbo (1973): 231.
Paul Ferdinand v. Frugence Bigutu, (1968) HCD. N.29, James and Fimbo (1973). 231. Rules 38 and 39.
3rd Sch. Rules on Wills Rules 38 and 39, James and Fimbo (1973): 235-236.
Local Customary Law (Declaration) Order, 1963, G.N. No. 279 of 1963, 1st Sch: Law of Persons, James and Fimbo (1973): 189.
Fulgence Mpikiwa v. Domitina Kihama (1975) LRT n. 9

Reference:

Gondwe, Z. S. (1990) Female Intestate Inheritance in Tanzania.
Whither Equality, Women in International Development. Michigan State University.
Working Paper No. 202, February 1990.

Islamic Law

Juma Goboka v. Halima Mohamedi (1975) LRT. N. 1
Tatu Abdulla v. Waziri Mussa (1975) LRT n. 7.

RECENT DEVELOPMENTS IN CUSTOMARY TENURE

A. Log possession of land as a basis of titles.

Reference:

James and Fimbo (1973), Chap. 24.
James (1971) Chap 11.
Kato, L.L. (1965). Has Customary Law in English Speaking Africa recognised long possession of land as a basis of title? 1965 EALJ 243.

Cases:

Steven Sokoni v. Million Sokoni, James and Fimbo (1973): 539.
Bi Juliana Rwakatare v. Kaganda James and Fimbo (1973): 543
Jumbe v. Jose, James and Fimbo (1973): 545.
Abed Shekulwavu v. Salimu Juma, (1968) HCD. N. 88, James and Fimbo (1973): 544.
Rashid Ali v. Wasia, James and Fimbo (1973): 546.
Lemayani v. Mhavi (1972) HCD.N. 149.
Mkakofia Merijananga v. Asha Ndisia (1969) HCD n. 204.
Kandia Naa v. Hussein Saidi (1976) LRT. N.1.
Swalehe v. Salim (1972) HCD. N. 140.

B. **Limitation**

Customary Law (Limitation of Proceedings) Rules 1963, G. N. No. 311 of 1964, James and Fimbo (1973): 551.

Cases

Philip Mtusha v. Stephen John, James and Fimbo (1973): 533.
Kataso Kabondola, Muhigi, James and Fimbo (1973): 537.
Boniface Mihigi v. Philemon Muhigi, James and Fimbo (1973): 557
Omolo s/o Imolo v. Okengo s/o Obuto, (1968) HCD. N. 2
Mzee Walipesa v. Rajabu Mgeyo, (1968) HCD. N. 24, James and Fimbo (1973): 562.
Shabani Mmasai v. Hassani Mcharo (1967) HCD. N. 329, James and Fimbo (1973): 556.
Paskazia d/o Bwahama v. Aloys Cyrilo (1967) HCD. N. 117.
Mukyemalila and Thadeo v. Luilanga (1972) HCD. N. 4
Roibert s/o Mwamaso v. Mwangwala s/o Mbyuta (1969) HCD. N. 13.
Stephania Byabato v. Francis Lwehabura & Anor. (1974) LRT. N. 25
Kamando Kimatare v. Edward Manedi (1978) LRT. N.47
Sweya Seleli v. Shilingito Bombasa (1978) LRT. N. 48

C. **Abandonment**

Village Land Act, No. 5 of 1999 Section 45.

Reference:

James (1971): 284-287.

Cases:
Iddi Juda Omari v. Abdallah, James and Fimbo (1973): 570.
Alimohamed Damji v. Gudka, (1953) E.A.C.A. 73, James and Fimbo (1973): 572.
Nyagobre Ginonge v. Chagha Gasaya, (1968) HCD. N. 409, James and Fimbo (1973): 575.
William Mwanukuzi v. Mhonyiwa Sozi (1975) LRT.N.11.

D. **Compensation for unexhausted improvements.**

Cases:

Rungita Nyoraro v. Omari, James and Fimbo (1973): 620.
Jafenia s/o Shimba v. Musuka s/o Nyanda. (1968) HCD N. 10. James and Fimbo (1973). 612.
Lukas Kaasha v. Mfumwa Shabani Sangwa 11. James and Fimbo (1973): 594.
Mukare Sambweti v. Meuti Sambweti, James and Fimbo (1973): 613.
Regena v. Mohamed (1971) HCD n. 332.
Christopher s/o Kashwa v. Kagaruki s/o Mashabe, James and Fimbo (1973): 609.
Ali Mangosongo v. Crispina Magenje (1977) LRT. N. 8
Lalata Msangwale v. Henry Mwamlima (1970) (LRT. N.3
Luka Mlele v. Athuman Kisimbo James and Fimbo (1973): 607.
Josephat Kabiyengo v. Laurian Kyomba s/o Nshage, James and Fimbo (1973): 610.
Lweikiza v. Ndyema (1971) HDC. N. 326.
Saidi Kalungura v. Issa Khamisi (1973) LRT. N.28.
Bi. Mukagilage Bitasimbile v. Raphael s/o Rubuli, (1968) HCD. N. 349, James and Fimbo (1973): 622.

Position at Common law

Ruanda Coffee Estate Ltd v. Singh (1966) E. A. 564, James and Fimbo (1973): 625

E. **Extinction of Customary Tenure**

Regulation of Land Tenure (Established Villages) Act, 1992 No, 22 of 1992.
Lohay Akunay & Joseph Lohay v. Attorney-General, High Court of Tanzania at Arusha Misc. Civil Cause No. 1 of 1993.

References:

Shivji, I. G. (1994) A' Legal Quagmire: Tanzania's Regulation of Land Tenure (Establishment (Sic) of Villages) Act 1992, International Institute for Environment and Development (IIED), Drylands Programme, Pastoral Land Tenure Series No. 5 11 May 1994: 1-33.

Fimbo, G. M. (1997) :The Making of a New Act in Tanzania" The Tanzania "The Tanzania Lawyer, February – May 1997, p.30-41.

Fimbo G. M. (2000) "The Land Delivery Systems in the Two Acts: The Land Act 1999. And the Village Act 1999", The Tanzania Lawyer, January 2000 p. 11-24; UDSM Nyerere Law Journal Vol. 1 No9 November, 1999.

Customary Tenure Reform

Village Land Act, No. 5 of 1999 Sections 18,20,21,27,28,29,45,48-59.

IV Urbanization and Urban Land Law.

Urban Land Development – Zoning, Building Permit, Planning Consent.

Townships Ordinance, 1920 No. 10 of 1920 Cap. 101 and
Township Building Rules, vol. 5 Subsidiary Legislation 1947 Laws of T.
Zoning: G. N. No. 47/1923, G.N. No. 49/1923, G.N. No. 160/1924.

Town Development (Control) Ordinance 1936, No. 15 of 1936, Cap. 103.
Planning and Development (Upanga Area) Ordinance, 1949, No. 56 of 1949, Cap. 283.
Town and Country Planning Ordinance, 1956 No. 42 of 1956. Cap. 378. Town and Country Planning (Use Classes) Regulations G.N. 504/1960.
Land Acquisition Act 1967. No. 47 of 1967.
Urban Leaseholds (Acquisition and Regnant) act 1968 No. 22 of 1968.

Reference:

Fimbo, G. M. (1992): 65-83
Tenga, R.W., (1988) Land policy and Law in Tanzania: An
Appeal for Action, 1988 (Unreported)
Gondwe, Z. S. Land Allocation in Tanzania – The Survey Angle, African Journal of International Comparative Law, Vol. 5 pt. 1.
Gondwe, Z. S. (1993) Planned Development in Tanzania-The Twilight Zone, Lesotho Law Journal Vol. 7 No. 2 December 1993.

(d) **Private Sector Housing**

Rent and Morgage Interest (Restriction) ordinance, 1941, No. 26 of 1941, Cap. 115 Laws of T. 1947.
Building Societies Ordinance, 1954, Cap. 340.

Rent Restriction Act 1962, No. 42 of 1962 as amended by Acts Nos. 24 of 1963, 63 of 1963 and 19 of 1966, Cap. 479.
Tanzania Housing Bank Act 1972, No. 34 of 1972.
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(e) **Public Housing**

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SECTION A : THE GRANTED RIGHT OF OCCUPANCY

Application of rights of occupancy. Forms of certificates and speciment forms. Double allocation of urban plots.
Conditions and incidents of rights-Lateral and subjacent support-Trespass-Nuisance-Controls of Land use-Taxes-Individual and Corporation taxes – Municipal Real Estate Taxes-other property taxes-Estate Duty.

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Income Tax Act, 1973, No. 33 of 1973.
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SECTION 2: CO-OCCUPANCY

Land Act No. 4 of 1999 section 159-166.
Holding in severalty. Concurrent interests. Joint tenancy and tenancy in common.

(a) Importance of distinction
(b) Nature and characteristics of Joint tenancy and tenancy in common.
Mutual Benefits Ltd. v. Patel and Anor. (1972) E.A. 496.

(c) Determination

Severance and implied severance.
Partition.

Partition Act 1868 (UK) 31-32 ict. C.40
Partition (Amendment) Act (1876) (UK) 39-40 Vict. C. 17.

Cases:

Pemberton v. Barnes (1871) Ch.D. 675.
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Reference:

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SECTION 3: THE USE OF ALIENATED LAND

GENERAL CONDITIONS.

Development Conditions-Revocation for non-development.
Land Regulations 1948.
Rights of occupancy (Development Conditions) Act 1963, Cap. 518, James and Fimbo (1973): 647.

SECTION 4: SUCCESSION

Testate and Intestate succession. Internal Conflict of Laws.

Land Ordinance, Cap. 113, section 13.
Probate and Administration Ordinance, 1961. No. 35 of 1961. Cap 445.
Administration (Small Estates) Ordinance, 1922. No. 20 of 1922. Cap 30
Succession Act 1865 of India.
Succession (Non-Christian Asiaties) Ordinance. Cap. 112

SECTION 5: LIMITATION OF ACTIONS FOR THE RECOVERY OF LAND

Length of period-the running of time-when time begins to run-postponement of the period-starting time running a fresh-the effect of lapse of time.
Law of Limitation Act, 1971 No. 10 of 1971.

Cases:

Ahmed Abdulkarim v Member for Lands and Mines (1958) E.A. 436.
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Wangwe Muhere v. Mogaya Chacha (1972) HCD n. 137.
Shivji v. Pellegrini (1972) HCD,n.76.
H. J. Stanley & Sons Ltd. V.D. T Dobie & Co.[T] Ltd 1874 LRT n. 51.

SECTION 6: EASEMENTS
Land Act No. 42 1999 Sections 143-158.
Law of Limitation Act, 1971, No. 17 of 1971, ss.31.37.

Definition – Characteristics
Ellenborought Park (1955) All E R 667, James and Fimbo (1973): 521.
(i) Dominant and servient tenements
(ii) Accommodate dominant one.
(iii) Dominant and servient tenements owned by different persons.

Tejpar v. Bhimji 1 TKR 653.
iv Right claimed must be capable of forming subject matter of an easement.

Creation of easements.
(a) Prescription.
Enjoyment of right peaceable openly as of right for uninterrupted period of 20 years; expressed as **nec vi-nec clam.**

(b) Express grang
(c) Express reservation

Note the common law rule that a legal easement cannot be created by a simple reservation in favour of the grantor: Johnstone v. Holdway (1963) 1 Q.B. 601, (1963) LQR 192.
Cordoll v. Second (Claufield Properties) (1968) 3 WLR 964.

(d) Implied reservation
Easements of necessity
Intended easements.

(e) Implied grant
Easements of necessity
Intended easements
Ancillary easements
Easements within the rule in Wheldon. Burrows (1897) 12 Ch. D. 31.
Requirements: User must have been continuous and apparent.

Tejshi v. A-G of Kenya (1959) E. A. 630.
Polden v. Bastard (18865) L.R.I Q.B. 156.

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Ward v. Kirkland (1966) 1 WIR 601
Protection by registration – Law of Limitation Act, 1971, s. 37(3) and (4)
Extinguishment: Release – Discharge and Modification

In re Freeman (1957) 1 WLR 560.

References:

Megarry (1982) Chap. 13.
Riddal (1983) Chap. 17

The principles governing the acquisition of easements by use at customary law see cases set out in James and Fimbo (1973): Chap. 23

SECTION 7: VENDOR AND PURCHASER

Land Act No. 4 of 1999 ss 36.41. 61-76.
The Sale of Land –Assignment of the Right of occupancy.

(A) **CONTRACTS.**

I Existence of a contract
Caveat empto
Notice – Actual notice
- Constructive notice
- Imputed notice.

Conveyancing Act, 1882, 45 & 46 c. 39, s.3(1).

Cases:
Bailey v Barnes (1894) 1 Ch. 25.
Oliver v Hinton (1899) 2 Ch. 264.
Wilkes v. Spooner and Anor (1911) 2 K.B. 475.

Misrepresentation

Law of Contract Ordinance, Cap. 433, s. 18 and 19 (1).

Batholomew Ndyanabo v. Bi Petronida Ndyamukama (1968) HCD N.359.

II. **Enforceability of the contract**

A. Need for Government approval.
Land Regulations, 1948 Reg. 3(a) and 3(c).

(i) Cases where approval has not been sought:

Nitin Coffee Estate Ltd. V. United Engineering Works Ltd, [1988] TRL 203.
Peter Karanti & 49 Others, Court of Appeal of Tanzania at Arusha, Civil Appeal No. 3 of 1988.

Sylveri Mushungu v. Theonestina Rwekanika (1974) E. A. 318; 1974 LTD, n 30.
Chang'ome Construction Co. Ltd. V. Shivji (1966) E.A. 379; James and Fimbo (1973): 460.
Gangji v. Hemedi (1956) 23 E.A. 268; James and Fimbo, (1973): 463.
Patterson v. Kanji (1956) 23 EACA 106, James and Fimbo (1973): 488.
Kassam v. Kassam (1960) E.A. 1042, James and Fimbo (1973): 484.
Tito Kornelio v. Geoffrey B. Mshana (1981) TLR 128.
Sheikh Ahmed El Haj v. Dhiyebi (1970) HCD. N. 134.

Salome Essau v. Abel Jeremia 1976 LRT. N. 47.
T.H. Patel v. Lawrensen & Matzen 1957 E. A. 299.

(ii) Cases where approval is sought but refused.
Rajper Ladak & Sons v. Rehmtulla Pirbhai Ltd (1980) TLR 328.

Freehold Titles (Conversion and Government Leases) Act 1963, Cap. 523 ss. 19 and 20.

National Bank of Commerce v. Desai & others (1969) HCD n. 206. James and Fimbo (1973): 480.
Paschal Joseph Mlay v. Anthony Phones (1968)) E. A. 563; James and Fimbo (1973): 471. Shirin Rajabali Jessa v. Alipio Zorilla 1973 Ltd n. 84; (1973) E.A. 506.
Oplustil. Gaganakis (1972) HCD n. 63.
Mario v. Merali (1972) HCD No. 75

B. Part Performance
Nitin Coffee Estates Ltd. V. United Engineering Works Ltd, [1988] TLR 203.

Abdually Alibhai Azizi B. Bhatia Brothers Ltd Misc. Civil Appeal No. 1999, Court of Appeal of Tanzania at Dar Es Salaam.

IV. **Terms of the Contract**

Cases:
East African Estates Ltd v. Khalfan and Others, 14 KLR 76.
Jafferali & anor v. Borrisow (1971) HCD 117.
In re Nisbert & Pott's Contract (1906) 1 Ch. 336 C.A.
Shantilal L. Shah v. G. Begum w/o L. Khan (1948) 15 EACA 25 (K).
Emmanuel Bwegilire v. Juma Hamisi (1967) HCD n. 45.

(B) CONVEYANCING

Instrument in prescribed form and requirement of registration.
Land Registration Ordinance, Cap. 334.s.41.
Samp Duty Act 1972, No. 20 of 1970.

Duty of Vendor to Purchaser between Contract and Completion.
Mohamed H. Abdulla & Anor. V. G. M. Shah & ors. (1958) E.A. 754, P.C. (K)

Reference:

Megarry (1982), Chap. 9.
Riddal (1983), Chap. 13.

(C) CONTROLLING THE USE OF LAND BY COVENANT-COVENANTS AFFECTING LAND

Privity neither of contract nor of estate: At law and in equity.

Grantees of Reversions Act, 1540, 32 Hen. 8, C. 34.
Real Property Act, 1845, 8 & 9 Vict. C. 106.
Conveyancing and Law of Property Act, 1881, 44 & 45 Vict. C. 41.

Conveyancing Act, 1882, 45 & 46 Vict. C. 39.
Conveyancing Act, 1911, 1 & 2 Geo 5, c.37.
Land Registration Ordinance, Cap 334.
Freehold Titles (Conversion and Government Leases) Act 1963, No. 24 of 1963, Cap. 523

Restrictive Covenants.
Nature

Case
Tulk v. Moxhay (1848) 2 Ph. 774.
1. To bind a purchaser of serient tenement.

(a) Covenant must be negative in nature even though positive in form, e.g To maintain he square uncovered with buildings.
(b) There must be a dominant tenement, exception the landlord's reversesion.
(c) It must not be personal to the coenantor.
(d) It must be noted on the register.

2. The purchaser will take the dominant tenement with appurtenant rights if.
   (a) The benefit of the covenant is assigned to him or it is annexed to the land purchased.
   (b) The rule in Elliston Reacher (building scheme) applies.

   See Rosslyn Estates (in Liquidation) v. Underwood 23 EACA 191.

   Discharge.

   Reference:

   Megarry (1982): Chap.12
   Riddal, (198) chap. 21.

SECTION 8: LANDLORD AND TENANT

(a) Terminology.
   Lease-demise-tenancy-term of years-leasehold interest.
   Lessor-lessee landlord-tenant-sublessor-sublessee

(b) Creation of leases.
   Conveyance of registered land.

   Land Act No. 4 of 1999 ss. 77-110.
   Land Registration ordinance, Cap. 334.ss. 41,2 and 54 Form L.R.8
   Stamp Duty Act 1972, No. 20 of 1972.

   Non-compliance with formalities.

   Souza Figueredo v. Moorings Hotel Co. Ltd (1960) E. A. 926.
   Kenneth Clarke v. Sondhi (1963) E.A. 107.
   Onotata Della Santa & Ors. V. Peera (1970) HCD N. 22.
   Gregory Mtafya v. Zainabu Lyimo 1976 LRT n. 3
   Amratlal Damodar Maltasar & Anor. T/a Zanzibar Silk Stores v. A.H. Jariwalla t/a Zanzibar hotel (1980) TLR 31. C.A.
   Mrs. Clara D'Souza v. Kanyamala 1974 L.R.T. n. 27.
   Statutory tenancy is created in certain cases by implication or application to the Regional Housing Tribunal: Rent Restriction Act 1984, No. 17 of 1984.

Chang'ombe Construction Co. Ltd Khatijaai Ebrahim Shivji (1966) E. A. 379, James and Fimbo (1973): 466.
Shirin Jessa v. Alipio Zarila 1973 LRT n. 84. (1973) E.A. 506

Acquisition of Buildings Act, 1971, No. 13 of 1971. s.7.

Habib Yusufali v. Abdulsattr Riazidin (1973) E.A. 74.
Jaffer Ladack v. Registrar of Buildings (1974) E.A. 139.
Rajper Ladak & Sons v. Rehmtulla Pirbhai Ltd (1980) TLR 328.
Registrar of Buildings v. Dr. A. H. Kombe (1982) TLR 61.

(c) Classification of Leases.

(i) Lease for fixed period.
Lace v. Chantler (1944) KB 368.
Options to renew: Gardner v. Blaxill (1960) 1 WLR 752.
Reviewed at 1960 LQR 453.
Sands v. Mtutual Benefits Ltd (1971) E.A. 156.
Habib Punja v. Agas (1967) 380.
Habib Yusufali v. Abdulsattar Riazidin (1973) E A 74.
Determination: by Effluxion of time.
Singh v. Godley (1942) 20 KLR 57.

Din v. Bin Said (24) 2KLR 66.

(ii) Reversionary Leases – Interesse termini

In re Strand and Savoy properties (1960) 1 Ch. 582.
Weg Motors Ltd. V. Hales & Ors. (1962) 1 Ch. 49.
Lewis v Baker (1905) 1 Ch. 46
Note s. 55 of the Land Registration Ordinance, Cap. 334.

(iii) Periodic Tenancies

By agreement or operation of Law

Hassan Saleh v. Savides (1921-52) 1TLR 451.
In re Seale (1912) 1 Ch. 610.
Ladies Hosiery and Underwear Ltd. V. Parker (1930) 1 Ch. 304.
Adler v. Blackman (1953) 1 Q.B.146.
Siedebotham v. Holland (1895) 1 Q.B. 378.

Waiver of right to determine lease by notice:
Century Automobiles v. Biemer (1965) E. A. 304.

(iv) Tenancies at will and sufferance
Holding over-determination at the will either party.

(v) Tenancy by estoppel.
Chatrath v. Shah Cedar Mart (1967) E.A. 93
Williams v. Mends 9 WACA 50.
Amokwaidoh v. UAC 1 WACA 178.
Century Automobiles v. Biemer (1965) E.A. 304.

(vi) Service Tenancy or Service Occupancy.

Rent Restriction Act, 1984, No. 17 of 1984.s.25 (3) (I)

Cases
Nitwa M. Msemembo v. Marco Ndawa 1974 LRT No. 29.
Shell and B.P. Tanzania Ltd. v. Wilbald Fulgence Rweyagira, Court of Appeal of Tanzania at Dar Es Salaam, Civil Appeal No. 25 of 1984.

Leonard Sirima v. MECCO Ltd, Housing Appeal Tribunal, DSM. Appeal No. 13 of 1987.

(d) Rights and obligations of Landlord and Tenant in the absence of Express Agreement.

1. Position of the landlord – Landlord's Obligations.

(i) Implied Covenant for Quiet Enjoyment

Land Registration Ordinance, Cap. 334, 334.s.56(2).
Rent Restriction Act 1984. No. 17 of 1984, ss. 38 and 39.

Cases:
Baynes & Co. v Lloyd (1895) 1 Q.B. 820. (1895) 2 Q.B. 610.
Budd-Scott v. Daniell (1902) 2K B 351.
Markham v. Paget (1908) 1 Ch. 697.
Owen v. Gadd (1956) 2 Q.B. 99
Perera v. Vandiyar (1953) 1 WLR 672.
Rep. V. Abdulrahman s/o Simon (1972) HCD n. 182.
Festo Ngowi v. rep. 1974 LRT n. 26.
Kenny v Preen (19630) 1 Q.B. 499
Jones v. Lavington (1903) 1 K.B. 253 C.A.

(ii) Non-derogation from grant.
Cases:
Herz v. Union bank of London, 2 Giff. 686
Robinson v. Kilvert (1889) 41 Ch.D 88.
Gro svenor Hotel Co. v Hamilton (1894) 2 Q.B. 836.
Aidin v. Clark (194) 2 Ch 437.
Harmer v. Jumbil (Nigeria) Tin Areas (1921) 1 Ch 200.

Elliot. D. W. (1964) 80 LQR 244.

(iii) Implied condition for fitness for habitation
Rent Restriction Act 1984. No. 17 of 1984. Ss. 35(1) an 46(1) At Common law there is no implied undertaking by the landlord.

Hart v. Windsor (1844) 12 M & W 68.

Furnished lettings.

Smith v. Marrable (1843) 11 M & W 5, 152, E.R. 693.
Sarson v. Roberts (1895) 2 Q.B. 395.

Tenant's Remedies.
Smith v Marrable 152 E R 693.
A. Savy v. Jenny Sadrudin Tharani (1965) E A 211.
B. Medhavaji v. Ker-Shavji (1930) 1 TLR 643.

2. Position of the Tenant
(i) Obligation to pay rent
Land Registration Ordinance, Cap. 334.s.56(1)(a).

(ii) Obligation not to commit waste
Land Registration Ordinance, Cap. 334, s.56(1)(b).

(ii) Obligation Ordinance. Cap. 334.s56(1)(b)
Rent Restriction Act 1984. No. 17 of 1984.s. 35 (I)

Cases:
Wood v. Porter (1916) 2 KB 91.
Marsden v. Heyes (1927) 2 K B 1
Redmond v. Dainton (19200 2 KB 256.
Sothe by Grundy (1947) 2 All ER 761.
Cricklewood Property Investment Trust Ltd. V. Leighton's Investment Trust Ltd (1945) AC 221
Denman v. Brise (1949) 1K 22.

(iii) Restraint on alienation.
Rent Restriction Act 1984. No. 17 of 1984.

Cases:

Kenneth Thomas Clarke, trading as shipping General Services v. Sondhi Ltd (1963) E.A. 107.

Esi v. Moruku (1940) 15 NLR 116.
Harry v. Martins (1949) 19 NIR 42.
Marques v. Edematie (1949) 19 NLR 75.

Mrs Clara D'Souza v. Charles Frank Kanyawana 1974 LR n.
Amratlal Damodar Maitasar and Anor. T/a Zanzibar Silk Stores v. A.H. Jariwalla t/a.
Zanzibar Hotel (19800 TLR 86.
Onorata Della Santa & Ors. V. Peera (1970) HCD n. 22.
Gregory Mtafya v. Zainabu Lyimo 1976 LRT n. 3
Ndesario v. John (1971) HCD n. 243.

(iv) Landlord's right to view
Land Registration Ordinance, Cap 334.s. 56(I)

Landlord's remedies.
(a) Suit for damages
(b) Distress for rent

Distress for Rent Act, 1689, 2 W & M c 5(6 Statutes 143).
Distress for Rent Act, 1737, 11 Geo 2 C.19.
Law of Distress (Amendment) Act 1888, 51 & 52 Vict. C. 21.
Law of Distress (Amendment) Act, 1908, 8 Edw. 7. C. 44
Rent Restriction Act 1984. No. 17 of 1984. S. 26.

Cases:
Karim Jivanjee & Co. v. Official Receiver of the Government of Tanganyika: The Trustee of the Property of Gordeon.
McDiarmid (decd), the Bankrupt (1936) 3 EACA 94.

Wampwewo Service Station v. Italian Garage (Pizzandi) Ltd (1963) E A 455.
Souza Figuredo & Co Ltd. George Panagopaulus and Ors. (1959) E.A. 756.
Kassamali Bhogadia v. Nasser (1963) E.A. 610.
Chatrath & Anor v. Shah Cedar Mart (1967) E. A. 93.
Wachira v. R. (1967) E.A. 201.

(c) Forfeiture or right of Re-entry.
Land Registration Ordinance Cap. 34,s.56(3).
Rent Restriction Act. 1984. No. 17 of 1984.s. 25(I)a.

Forfeiture for non payment of rent.
Tenant's right to relief

Common Law Procedure Act, 1852, 15 & 16 Vict. C.76.
Coveyancing and Law of Property Act 1892, 55 & 56 Vict. C. 13.s.4.
Freehold Titles (Conversion and Government Leases) Act 1963, No. 24 of 1963. Cap 523.s. 29.

Forfeiture for Breach of other covenants.
Coneyancing and Law of Property Act 1881, 44 & 45 Vict. 41 ss. 14 and 67.

Cases:
Jamat v. Godinho (1936-51) 6 ULR 4.
Rugby School (Governors) v. Tannahill (1935) 1 KB 87.
Norton v. Romney Estates (1950) 2 WLR 363, (reviewed at 1965 Camb. L.J. 210).

Relief Against Fofeiture.

Cases:
Rogers v. Rice (1892) 2 Ch 170.
Kiwanuka – Musisi v. Seggare (1973) E.A. 561.
Canini v. Suleiman and Anor (1964) E.A. 619.

(d) Waiver

Cases:
Eastern Radio Service v. Patel (1962) E.A. 818.
Prem Vati v. Inchharan (23 (2) KLR 32.
Davenport v. R (1877) 3 AC 115.
Segal Securities Ltd v. Thoseby (1963) 1 QB 887.
Amratal Damodar Maltaser v. A. H. Jariwalla (19800 TLR 86.
Clarke v. Grant (1950) 1 K B 104.
Carter v. Green (1950) 2 K B 76.

3. Merger.

Cases:

Foster v. Robinson (1951) I KB 149
Colins & Anor, V. Claughton (1959) I All E R 95.
Baker v. Mrckel (1960) I QB 657.

4. Surrender.

Cases:

Foster v. Robinson (1951) 1 K B 149.
Collins & Anor. V. Claughton (1959) 1 All E R 95.
Baker v. Mrekel (1960) 1 Q B 657.

(e) Convenants in Leases.

1. Privity of Estates-Rights and Liabilities of original parties-Rights and Liabilities of Assignees.

Where the Lessee assigns the Lease
Burdens of covenants.
Land Registration Ordinance. Cap. 334.s.49(1)

Cases:

Spencer's Case (1583) 5 Co. Rep. 169 77 E R 72 (K.B.)
Grescot v. Green (1700) 1 Salk 199.
Paul v. Nurse (1828) 8 B & C 486.
Harley v. King (1835) 2 Cr. M & R. 18.
Benefits of Covenants.

Where the Lessor Assigns the reversion.

Grantees of Reversions Act 1540. 32 Hen 8 c. 34.
Conveyancing and Law of Property Act, 181 (44 & 45 Vict. C. 41) ss. 10, 11 and 58.
Conveyancing Act, 1882, 45 & 46 vict. C. 39 s.11.
Conveyancing Act, 1911, (1 & 2 Geo. 537). S.2.

Assignment of right to sue for damages or to forfeit for breach of covenant?
Fairest, P.B. (1965) CLJ 210.

Flight v. Bentley (1835) 7 Sim 149.
Hunt v. Remnant (1854) 9 Exch. 635.

Covenant to sell the reversion.
Benefit of the option.
Grantees of Reversions Act, 1540, 32 Hen. 8 c. 34.

Cases:
Woodall v. Clifton (1905) 2 Ch. 257.
Grifith v. Pelton (1958) 1 Ch. 205 (reviewed at 1958 74 LQR 243).
Hall v. Erwin (1888) 37 Ch. D. 74.
Bryant v. Hancock & co. Ltd (1898) 1 Q.B. 716, (1899) A C.442

Burden of the option.

(f) Lease and Licences
Importance and distinction.

Reference:
Megarry (1982) Cap. 11.
James R. W. (1967), Some Problems on Leases and Licences, 1967 E.A. L. J. 246
Case
Ruanda Coffee Estates Ltd. v. Singh (1966) E. A. 564, James and Fimbo (1973): 625.

SECTION 9: MORTGAGES

(a) The Common Law mortgage-legal mortgage of freeholds-legal mortgage of leaseholds – equity of redemption-equitable right of redemption.
Registered mortgage-implied covenants-second and subsequent mortgages – Tacking – Transfer of mortgages-Equitable mortgages-the right of the mortgagee to redeem the property – the right to consolidate – Discharge of mortgage, Mortgage's remedies.

(b) Registered Mortgages
Land Act No. 4 of 1999 –ss 111-142.
Land Registration Ordinance. Cap. 334.

Cases:

Hashard Ltd. v. globe Cinema Ltd And Ors. (1960) E.A. 1046
Olinda de Souza Figuerido v. Kassamali Nanji (1962) E.A. 756. (1963) E.A. 381.

Manyara Estate Ltd v. N. D. C. A. (1970) E.A. 177.
Pioneer Assurance Society Ltd. v. Kamunye and Ors. (1969) E.A. 54.

(c) Transfer of Mortgage. Transfer of equity of redemption inter vivos.
(d) Equitable mortgage.

(i) Deposit of certificate of title
Russel v. Russel 28 E. R. 1121
Barclays Bank v. Gulu Millers Ltd (1959) E. A. 540.
Ottoman Bank v. Hanna Ghaui (1961) E. A. 419.

(ii) Defect in form
Tebb v. Hodge (1869) L.R. 5 C.P. 73
Guaranty Discount Co. Ltd. v. Credit Finance Corp. Ltd. And Anor (1963 E.A. 345.
Popatlal (Govindji) v. Raichand (Premchand) Ltd. (1963) E.A. 69.

(iii) The right of the Mortgage to redeem the property.
The right of redemption is inviolable (there must be no clog or fetter on the equitable right of redemption) – collateral advantages – who can redeem.

Cases:
Samuel v. Jarrah Timber (1904) A C 323, (1904) W N110.
Lewis v. Frank Love Ltd. (1961) 1 WIR 261.
Reeve v. Lisie (1902) A C 461
J. Fairclough v. Swan Brewery Co. Ltd (1912) A C 565
Kninghtsbridge Estates Trust Ltd. V. Byrne (1939) 1 Ch 441.
Biggs v. Hoddinnottt (1980 2 Ch 307.
Noakes v. Rice (1902) AC 24.
Kreglinger v. New Patagonia Meat C. Ltd (1914) A C 25.
City Land and Property (Holdings) Ltd. v Dabrah (1968) Ch 166, (1967) 3 WIR 605.
(19679 2 All E R 639.
Multiservice Bookbinding Ltd. v. Marsden (1979) Ch 8.
(f) The right to concolidate
Reservation of right-dates for redemption for both mortgages have passed-both mortgages made by the same mortgagor.

(g) Discharges of mortgage
(h) Mortgagee's Remedies

Final remedies

Foreclosure-the maxim is 'foreclose down'
For conduct of a foreclosure action see Order 32 Rule 1.
Barclays Bank D.C.O. v. Gulu Millers (1959) E.A. 540
Equitable Mortagee.

Sale-Express power – Statutory power of sale-effect of sale.

Eriyazali Senkuba v. Uganda Credit and Savings Bank (1965)
E.A. 624 (1965) E.A. 500.
Warner v. Jacob (1882) Ch. D 220.
Vidot v. Babu Sharm (1966) E.A. 72
Shah & Anor v. Dewji (1965) E. A. 54.
Bhatt v. Singh (1962) E.A.54
D.B. Mehta v. Adolf A.E. Sequera (1965) E.A. 729, (1966) E.A. 384
Popattal v. Isandjee (1962) E.A. 372.

Equitable Mortgagee.
Re Hodson & Howe's Contract (1887) 35 Ch D 668.

Sale by Court-For conduct of such sale see Order 32 Rule 3 Ottoman Bank v. Hanna Ghaui (1961) E A 425.
Gordon v. Boos (929) A C 781.
Odendaal and Official Receiver Gray (1960) E A 263.
Sheikh Mohamed Bashir v. United Africa Co. (Kenya) Ltd. (1959) E. A. 864.

M. K. Lakhani v. S. K. H. Finance & Investment Co. Ltd (1958) E A 79.

Non Final remedies

Action for possession
Western Bank Ltd. v. Schindler (1970) Ch 1.
Birmingham Citizen's Permanent Soc. V.
Pioneer General Assurance Soc. Ltd. v. Kamunye (1969) E A 54.

Equitable Mortagee.
Barclays Bank v. Bird (1954) Ch. 274. (1954) 2 WLR 319.

Finck Tranter (1905) I KB 427.

Appointment of a Receiver.

Appointment out of court.
Conveyancing and Law of Property Act, 181, ss. 19 and 24.
Appointment by the Court.
Civil Procedure Code, 1966, Order 38.
Land Registration Ordinance, Cap 334, s. 77.

Harrison v. Cannot 1915 2 ULR 178.
Chatrath v. Shah Cedar Mart (1967) E. A. 93.

Equitable Mortgagee.

Action on the covenant for repayment.

Narinder Kumar Jolly v. Lall Basant Singh (1962) E A 203
Vidot v. Sharma (1966) E A 72.
The Diamond Jubilee Investment Trust Ltd V. J. Hassan Jadavji (1964) E A 438.

References:

James (1971) Chaps 14 and 15.
Megarry (1982) Chap. 14

SECTION 10: TRUST OF LAND

A Trust of land falls under one of the 3 heads;
(a) simple or bare trust,
(b) settled land and
(c) trust for sale.

Land (Law of Property and Conveyancing) Ordinance, Cap. 114.s.2(1).
Statute of Frauds 1677 (UK).

Parry v. Carson (1963) E. A. 91.

Settled Land Act 1882, 45 & 46 Vict. C.38
Settled Land Act 1884, 47 & 48 ict, C. 18
Settled Land Act, 1890, 53 7 54 Vict. C 29.
Trustee Act, 1893, 56 & 57 Vict. C. 53.

(a) Settled Land before 1964.
Effect of the Freehold Titled (Conversion and Government Leases) Act, 1963, No. 24 of 1963, Cap 523 on beneficiaries' interests and on powers of tenant for life, s. 5(2), a 9(1).
Land Registration Ordinance, Cap 334, ss. 30, 31.

(b) Settlement of right of occupancy granted under the Land Ordinance, Cap. 113.

Approval

Land Regulations. 1948 r. 3.

(c) Trust for sale before 1964

Effect of Cap. 523 s 5(2) 4th Sch, amendment to the Settled Land Act, 1882.
Effect of disapplication of Cap. 523.

(d) Trust for sale right of occupancy granted under the Land Ordinance, Cap, 113.

(e) Simple trust not within the S. L. A. 1882.

Saunders v. Vautier (1941) 4 Beav 115.

Trustees Investment Act, 1967, No. 33 of 1967.

Reference

James (1971) Chap. 2 section 2
Megarry (1982) Cap. 6
Riddal (1983) chap.6

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March, 2005