

**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE EXPRESS WAY, JABI – ABUJA**

**FACULTY OF LAW**

**DEPARTMENT OF PRIVATE AND PROPERTY LAW (PPL)**

**OCTOBER/NOVEMBER EXAMINATION 2016**

**COURSE CODE: LAW 522 (PUL 522)**

**COURSE TITLE CONVEYANCING LAW II**

**CREDIT UNIT: 4**

**TIME ALLOWED: 2 ½ HOURS**

**INSTRUCTIONS: ANSWER FOUR QUESTIONS ONLY. QUESTION ONE IS COMPULSORY**

**QUESTIONS**

1. Sam advertised his 10year old house for sale. The house is on a two acre land and he has legal title. Lucky saw the advertisement and contacted Sam expressing desire to buy the property as use for an ecofriendly camp. Sam wrote to Lucky, giving him a handwritten note on the description and directions to the property. Impressed with Lucky’sI deals Sam handwrote and signed in the presence of his childhood friend, Akpan that:

“I Sam, in consideration of the love of Lucky to nature and natural life, convey all my interest on the two acre along OdoAlaro, east of the mouth of Palm groove, around or just about getting to Mekwen Bridge, on the way to National Open University of Nigeria in Lagos State. May 12, 1999”’.

Akpan, his friend, signed as “Akpan, citizen of the heavenly Jerusalem, lifelong friend of Sam”. Sam sealed the envelop and addressed it to Lucky. Two weeks later, Sam died. Akpan, too, couldn’t bear the loss of his friend, packed his luggage and left town.

Discuss whether Lucky has title.

1. To what extent does the law strike a fair balance between the interests of the mortgagor and those of the mortgagee in respect of enforcing the mortgagee’s remedies of possession and sale?
2. Andrew is the Managing Director of RH Logistic Plc.; Andrew needs to revamp his ailing cold room business named RH Nigeria Plc. To do this, he needs about 10million naira. He approaches Ace Bank Ltd where Christine, the Manager of Ace Bank Ltd agrees to advance mortgage facilities to RH. Andrew puts as security for the loan, Capitol Hill, his registered freehold property. The Mortgage Deed included an express power of sale implied by Deed. With the mortgage facility of N10m, Andrew ordered for goods for his business. The goods, while on sea, were lost to a sudden storm, thereby losing all the goods on the sea. He approached Dorothy Spikes Finance House for another N10million naira loan so that he could re-stock and continue business. Because the MD of Dorothy Spikes is his friend, they agreed to perfect all the papers at a later date while the money was hurriedly advanced to him to enable him use it as needed. Unfortunately Andrew’s other businesses began to run down so that he could not pay the monthly installments on the two mortgages. He falls into arrears with numerous numbers of installments under the legal charge to Ace Bank and Dorothy Spikes Finance House. Ace Bank Ltd decides to exercise their power of sale in order to recover the mortgage sum together with the interests due. Ace Bank advertised a notice for the public auction of Capitol Hills only once and the advert appeared in the miscellaneous items of the local newspaper instead of the property section. The Bank also consulted Evita as a Receiver to ensure the interest on the mortgage of the Capitol Hills. Evita invited her best friend, who just lost her job to act as the Surveyor and to obtain a current market price of similar property for reference. The auction held under reasonable condition. However, very few people attended, and on the auction day, sold Capitol Hills to Phantom Builders Ltd, where Christine is a Director of the company at under market value. Andrew is angry that the auction was advertised once which did not attract as many potential bidders as possible. The MD of Dorothy Spikes also informed him that Christine chose to exercise her power of sale because she has vested interest in the property and in order to give priority of interest over him and Andrew. With the aid of **statutory and judicial authorities**, advise Andrew and Dorothy Spikes on the following issues raised in the mortgage:
3. Whether the statutory power of sale had arisen;
4. Whether the statutory power of sale had become exercisable;
5. The duty of Ace Bank to act in good faith and to obtain the true market value at the time of sale;
6. Method of sale;
7. The legal position of Dorothy Spikes Finance House.
8. Sunny agrees to buy a plot of land at Ikoyi from Paul, for a consideration of M35million. He made an initial deposit of 50% of the purchase price with an agreement to pay the balance within two weeks. He was given a receipt in acknowledgement of the money paid. A week after, Paul gets another offer for the same plot of land for N50million from Taju. He prepares a deed of assignment in favour of Taju, Sunny is asking advice on the following issues :
9. He wants to know whether there is any difference between a deposit and a part payment;
10. What are the legal issues that have arisen from the scenario;
11. The remedies open to him
12. Why would you advice a conveyance to include the following clauses in a deed of

assignment?

1. Covenant to insure
2. Safe custody and acknowledgement for production
3. Receipt
4. With the aid of statutory authorities and case law, discuss the creation of legal mortgage in Lagos, Ogun region and Zamfara State.