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**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 1997**

CONVEYANCING AND REGISTRATION OF TITLE

(Monday, May 26 , 1997)

Instructions to Students:

- (a) Time: 3 1/2 Hours**
- (b) Answer FIVE questions only.**
- (c) In answering any question, a candidate may reply by reference to the law of any Commonwealth Caribbean territory, but must state at the beginning of the answer, the name of the relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.**

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Slam Gordon died on May 5, 1996. At the time of his death he was possessed of the fee simple in " All that parcel of land, approximately 17 acres (approx. 7 hectares), part of Regis, Clarendon, butting and bounding to the North by lands belonging to Gerald Williams, to the South by land belonging to Helgs Jones and to the East and West by parochial roads respectively".

In his Will dated June 6, 1963, whereby Jean Flowers and Joe Blooms were appointed executors and trustees, he made the following devise, "All my 17 Acres of land part of Regis, Clarendon which I have had since my father left it to me in 1953, I leave to my son Leroy for life remainder to his two sons Bim and Bam absolutely." Probate was granted on August 18, 1996.

In March 1996, prior to his death, Gordon had obtained subdivision approval to divide the land into 4 lots - Lot 1 (4 Hectares) Lots 2,3 & 4 (1 Hectare each). Leroy has agreed to sell to Mary Tilt Lot 2 for \$1,000, 000 subject to the restrictive covenants set out in the schedule attached to the Agreement for Sale.

- (i) Draft the conveyance.
- (ii) On completion of the transaction, the contract having been silent to any question of registered title, Mary Tilt now requires and has demanded that Leroy provide her with a registered title. She is further insisting that Leroy pay all costs in this regard.

Advise Mary Tilt and outline the information including the documentation you will require to make an application for registered title.

QUESTION 2

Jerry White and his wife, Susie, have three adult children, Frank, Gillian and Iris. Frank and his parents are registered as joint tenants of the family home at 3 Princess Street, St. George and registered at Volume 723 Folio 26, the principal place of residence of the family up until the recent death of Jerry.

By his Will, in which Susie was appointed his sole executor and trustee, Jerry made the following devise: " I leave all my interest in our home to my daughter Gillian in accordance with our wishes and numerous discussions where we agreed that I should leave my share to Gillian and you will leave your share to Iris with the intent that all three children should have the home in equal share on our deaths."

At the time of Jerry's death, the premises were subject to a mortgage to Bank Limited, a balance of \$236,000 being outstanding.

Mrs. White, Frank and Gillian have successfully negotiated a loan with Easy Interest Limited to finance a pay out to Bank Limited. Bank Limited has agreed to send the Certificate of Title on to Easy Interest Limited but it cannot be located and believed it may have been lost in the move from their French Street to High Street office.

- (i) Advise Susie, Frank and Gillian of the steps to be taken to have the title in their sole names and outline what information shall be required to draft the necessary documentation.
 - (ii) Outline the steps that are to be taken to address the matter of the lost title and draft the statutory declaration of the registered proprietors.
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QUESTION 3

In July 1995, Seeta Wayland inherited a parcel of land comprising 5 hectares from her father. Subsequently, she agreed with Peter Mason to sell him 2 hectares of the said land for the price of \$1,200,000. In February 1997, he paid her \$600,000 and she gave him the following receipt -

“Received from Peter the sum of \$600,000 being deposit for the purchase of 2 hectares of land. Balance of 600,000 to be paid on June 15, 1997. Time to be of the essence” .

Recently, Peter wrote to Seeta referring to the Agreement and the receipt, asking her to provide him with a plan of the land and informing her that his visual inspection of the property indicated that there are two tenants that must be removed prior to completion of the sale.

Seeta replied that it was never a term of their agreement that she provide him with a plan nor remove any tenant and that in any event if he did not complete the sale by June 15, as agreed, she intends to forfeit the \$600,000 paid by him.

Advise Peter.

QUESTION 4

Jenny Class has brought to you an unsigned Agreement for Sale from which you see she is buying a strata lot/condominium unit from Tom Sells for \$4,000,000 and Sharpe Lawyers, Attorneys-at-law, have the carriage of sale.

Tom himself bought the unit 5 years ago.

An amount of \$700,000 is outstanding on a mortgage on the lot/unit and Jenny will be getting a mortgage of \$3,000,000 from House and Home Building Society towards the purchase.

Jenny wants you to handle the transaction for her.

- (i) Outline in chronological order the procedural steps to completion.
 - (iii) What searches, requisitions and enquiries would you make.
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QUESTION 5

In 1995, Silly Blue entered into contract to sell his summer house which has registered title to Joe Tacky for \$4,900,000. An initial payment of \$735,000 including the deposit of \$490,000 was duly paid. On a day prior to completion and after paying in the full balance purchase price and costs to Blue's attorney-at-law, Tacky learnt -

- (i) that there had been a dispute between Blue and his neighbour in respect of a right of way over the eastern part of land (this was registered on Blue's title) and the neighbour had that very day obtained judgment in his favour and

- (ii) that the "relative" in the out room in the out building to the back of the premises whom the purchaser had said would vacate on completion is actually a tenant with a 5 year lease, 3 1/2 years having been completed, and
- (iii) that the local authority had recently resolved to acquire 2 feet off the front of the land to widen the main road.

The Transfer has not yet been registered on the Certificate of Title which is still with Blue's attorney-at-law.

Tacky immediately stopped payment on the cheque, informed Blue that the contract was rescinded due to his breach of the terms of the contract and demanded a full refund of \$735,000 paid by him and lodged a Caveat. Blue has since returned \$245,000 to Tacky.

Blue now has another purchaser willing to pay \$6,000,000 cash for the land but Tacky will not release the caveat enabling the Transfer to be registered unless the full deposit, interest to date and damages (costs, valuations reports etc.) amounting to \$1,000,000 is paid to him.

Advise Tacky as to his position generally bearing in mind the options which may be available to Blue in respect of the Caveat.

QUESTION 6

- (a) In 1992, James lent Shortcash \$450,000 for which Shortcash gave James a mortgage over his premises, 17 Dew Drive, St. Ann registered at Volume 457 Folio 78, as security for the loan. It was agreed between the parties that Shortcash would make mortgage payments directly into a bank account designated by James.

Shortcash has since July 1996, paid up the mortgage in full, and now wishes to sell the land. He has copies of all the relevant lodgement slips but he has been unable to locate James to effect a Discharge of the Mortgage. He has learnt that James, when last heard of, had left the island for East Africa sometime in October 1993, and no one knows of his whereabouts.

Advise Shortcash and draft the relevant documentation to effect discharge of the mortgage.

- (b) Outline in chronological order the steps and procedure you would follow to effect a power of sale of registered premises subject to mortgage, the mortgage being in arrears for 6 months.
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QUESTION 7

You have been retained by Dogood who is selling his house at 4 Clarks Avenue, for \$2,000,000 to purchase another, "Yuppie Ville", St. Ann and registered at Volume 768 Folio 23, for \$4,000,000.

Home and Loan Building Society Limited has agreed to lend \$2,500,000 towards the purchase price of "Yuppie Ville". The vendor of "Yuppie Ville" has agreed to give Dogood a vendor's mortgage of \$500,000. This shall be second to the Building Society's mortgage.

The following events and transactions have taken place and have been extracted from the recorded file memos -

1. 16.1.97 Dogood is unable to find all the initial payment due on "Yuppie Ville" from his own resources. In exchange for suitable undertaking given by the firm, \$500,000 received from Reputable Bank Limited to be used as interim financing. Interest charged at 10% per annum.
2. 20.1.97 Dogood pays in \$200,000 to the firm.
3. 1.2.97 Contracts exchanged for "Yuppie Ville" - initial payment of \$600,000 (Including deposit) paid to Home Lawyers attorneys-at-law acting for the vendor. Completion set for June 30, 1997.
4. 6.4.97 Received from Home Lawyers Statement to close in respect of "Yuppie Ville" showing balance due to close as \$3,074,995. Sum is inclusive of apportionments (\$174,995) and account taken of Vendor's mortgage.

5. 15.4.97 Received undertaking from Home and Loan Building Society Limited to lend \$2,500,000 towards the purchase of "Yuppie Ville".
6. 30.4.97 Completed sale of Clarks Avenue. Balance in hand to the credit of Dogood - \$1,190,000.
7. 15.5.97 Paid \$5,000 for Surveyors Identification Report - "Yuppie Ville".

Settled in full debt with Reputable Bank - \$517,000.
8. 25.5.97 Attorney's costs + GCT "Yuppie Ville" - \$92,000.

- (i) Prepare a final Statement of Account for Dogood incorporating the transactions for both the purchase and the sale. (Use only the facts given)
 - (ii) In order to facilitate completion of the transaction, draft the appropriate letter of undertaking to Home Lawyers.
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QUESTION 8

Hustler is the registered proprietor in fee simple of a lot known as 3 West Avenue in the Parish of Wasteland and registered at Volume 452 Folio 93 in the Register Book of Titles.

The lands are part of lands comprised in a subdivision registered in 1989 and made subject to the following restrictive covenant -

“No shop, church, meeting house, school, trade, business or commercial buildings or other buildings of any kind shall be erected on the said land other than a private dwelling house with appropriate outbuildings.”

Hustler has recently been laid off from work and plans to erect at the back of the premises, a small building from which she plans to operate a nursery school. She is of the opinion that not only would the venture be highly profitable to her, but that the immediate community and their neighbours would benefit from the facility as there are no nursery schools in a five mile radius of the housing scheme.

- (i) Explain to Hustler the likelihood of success in an application by her for modification of the covenant.
 - (ii) Draft the Originating Summons.
 - (iii) List the information required to put in the Affidavit of Support of the Originating Summons.
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