

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2001

CONVEYANCING AND REGISTRATION OF TITLE
(MONDAY, MAY 14, 2001)

Instructions to Students

- (a) Time: 3½ hours
- (b) Answer FIVE questions.
- (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 territory.
- (d) It is unnecessary to transcribe the question you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

You act for James Navarro and his 18-year-old granddaughter, Felicity. James Navarro has recently entered into a contract to purchase a studio condominium for his granddaughter, Felicity. New Era Bank Ltd. advanced him, as a demand loan on an equitable mortgage against his home, the small sum which he needed to complete the transaction. This was done on the understanding that on completion of the sale a legal mortgage will be registered against the condominium.

James has asked that you speak with Felicity and expose her to the implications of the transaction and her obligations and liabilities as a strata unit owner.

- (a) Outline to her the implications and obligations of owning a strata unit paying particular attention as to how she will have to relate to the other unit owners.
 - (b) Explain briefly what is meant by:
 - (i) a repayment mortgage plan;
 - (ii) mortgage protection insurance;
 - (iii) equitable mortgage.
 - (c) Draft a suitable letter to New Era Bank Ltd. pursuant to your client's instructions to forward the Certificate of Title to the bank so that they may register the mortgage for Felicity.
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QUESTION 2

Hilma and Paul Charm are owners of their matrimonial home being ALL THAT parcel of land situate at Hope in the Parish of Windsor. The property belonged to Paul's father, Joseph, who inherited it in 1953 from his own father Peter. Joseph who died testate in September 1982 devised it to Paul, his only son who was the sole executor and beneficiary of his estate. Paul obtained Probate on December 5, 1982 and by Assent dated January 6, 1984 he vested title in himself. Paul married Hilma in February 1990 and by Deed of Conveyance dated March 6, 1991 and recorded at LNS 5567 Folio 90 he conveyed the land to Hilma and himself as joint tenants. In April of that year they gave a mortgage to Building Loans Inc. for a loan of \$750,000. This was recorded at LNS 5567 Folio 167.

In recent times problems have developed in the marriage and Hilma has filed for divorce. The couple has agreed as part of the divorce settlement that Hilma should convey her interest in the property to Paul who will become responsible for the balance of the mortgage debt. There is now due and owing \$300,000 to Building Loans Inc. Building Loans Inc has agreed to join in the Conveyance and release Hilma from her undertaking under the mortgage.

- (a) Draft the necessary Deed of Conveyance.
 - (b) If Paul now decides to apply for a registered title, list the documents that ought to comprise the application.
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QUESTION 3

You act for Jenny Johnson. By Agreement for Sale dated March 2, 2001 Jenny Johnson agreed to sell her home known as 16 Mark Lane, Bridgeview and registered at Volume 298 Folio, 45 of the Register Book of Titles.

The material terms of the contract were

Purchase Price	-	Three Million Dollars (\$3,000,000)
Deposit	-	\$450,000 to be paid to the Vendor's Attorney-at-law. The balance on completion.
Completion	-	June 25, 2001

Contracts were exchanged on March 16, 2001 and the deposit paid.

The original Duplicate Certificate of Title was kept under lock and key in the desk drawer in Jenny Johnson's study.

On April 4, 2001 Penny Farthing obtained a Surveyor's ID Report, which found the premises to comprise 18,894 square metres and not 19,000 square metres. On April 25 while Jenny Johnson was away on vacation the house was broken into and set afire. Damage was done to the extent of \$250,000. Part of the Police Report indicated that the watchman was overpowered and tied up. The Fire Department Report indicated that the main damage was contained to the study on the ground floor, which was totally gutted.

Penny has refused to complete the contract and has demanded the refund of her deposit from you. Jenny Johnson, on the other hand, is insisting that Penny must complete the contract.

(a) Advise Jenny Johnson.

- (b) Assuming that the sale will proceed to completion, draft an appropriate application to the Registrar of Titles so that Jenny Johnson may meet her deadline for completion.
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QUESTION 4

By Agreement for Sale dated January 8, 2001 and for which you have carriage of sale, James Bond, the owner of property registered at Volume 487 Folio 902 of the Register Book of Titles agreed to sell it to Juliet Magic for \$5,000,000. The contract is an open contract set for completion on May 31, 2001.

The property is the matrimonial home of Mr. Bond and his wife Lucile. The couple intended to use part of the proceeds of sale to travel for 6 months and on their return to the Island to purchase another home.

Mrs. Bond has called in to see you. She informs you that yesterday afternoon, while on his way to you to execute the Instrument of Transfer, Mr. Bond was tragically killed in a motor car accident. His death has quite understandably affected all of her plans, which she now intends to cancel. This includes not going ahead with the sale. Luckily for her, the house has been left to her in Mr. Bond's Will. She complains that Miss Magic has been most unreasonable when she spoke with her on the matter. She seemed very sorry to hear of Mr. Bond's death but is refusing to cancel the contract. Indeed she says that she will help in anyway that she can, provided that she is not put out of pocket.

Miss Magic has completed the sale of her own home since April 30, 2001, and has been living in a guesthouse pending completion of this transaction. She has been paying storage fees for her furniture since May 1, 2001.

- (a) Advise Mrs. Bond.
 - (b) Assuming the transaction will be completed, outline to her the steps and procedures necessary to effect completion.
 - (c) Would your answers be any different if Mr. and Mrs. Bond were both parties to the contract as
 - (i) joint tenants; or
 - (ii) tenants-in-common.
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QUESTION 5

Your client is Daphne Scott who is due to sell her house "Clappers" for \$1,200,000 and buy another house "Runlike" for \$1,400,000. There is a mortgage on "Clappers" for \$350,000 and the same Bank (The Predial Bank) has agreed to advance the sum of \$250,000 towards the purchase price of "Runlike".

You are required to draft a financial statement for Daphne Scott prior to completion. Daphne's transactions for both purchase and sale are to be included in the financial statement. (You are not required to compute the figures and balance the account).

The following events and transactions are taken from the file notes.

2001

January 6 Search Fee re "Runlike" (\$6) and to obtain copy Title (\$20).

January 8 Paid surveyor for Identification Report \$20,000.

- February 18 Scott is unable to find the deposit on "Runlike" from her own resources and after a suitable undertaking from the firm a cheque for \$ 210,000 is received from Reputable Bank Ltd. to be used as a bridging loan.
- March 2 Contracts exchanged for "Clappers" and the initial payment of \$180,000 inclusive of the deposit of \$120,000 is received from the purchasers.
- March 5 Request Statement of Account, Discharge of Mortgage and Certificate of Tittle from Predial Bank on undertaking to pay the sum due on completion.
- March 12 Stamped Agreement for Sale. Paid Stamp Duty \$65,990 and Transfer Tax \$90,000.
- March 15 Contracts exchanged for "Runlike" and the initial payment of \$210,000 inclusive of the deposit of \$140,000 is paid to vendor's attorneys-at-law.
- April 5 Sent final Statement to purchaser's attorneys-at-law re "Clappers" which shows, inter alia, the following details:
- | | |
|---|----------|
| Half Costs Preparation Agreement for Sale | \$15,000 |
| GCT | 2,250 |
| Half Stamp Duty | 32,995 |
| Half Registration Fee | 3,000 |
- April 25 Memo on costs re "Runlike" shows inter alia the following details:
- | | |
|---|----------|
| Half Costs Preparation Agreement for Sale | \$15,000 |
| GCT | 2,250 |
| Half Stamp Duty | 38,495 |
| Half Registration Fee | 3,500 |
| Interest on Bridging Loan | 13,100 |
| Attorney's Costs | 49,000 |
- April 30 Received Banker's Draft from Scott to cover closing costs.
- May 2 Received cheque from Predial Bank in respect of mortgage proceeds "Runlike" - \$250,000.

- Received documents from Predial Bank re "Clappers" including statement to close showing full sum to close as at completion as \$235,000.
- May 15 Completed sale of "Clappers". Paid Building Society \$235,000 and Reputable Bank Ltd. \$210,000 plus interest \$13,100.
- May 18 Paid Real Estate Agent's Commission \$42,000.
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QUESTION 6

Your client Ray Clue is contemplating purchasing 2 hectares of land with a view to building a new home on one hectare and to construct a condominium complex on the remaining one hectare.

The Certificate of Title contains the following Restrictive Covenants:

- " 1. Not to utilize the land above described in any other manner or for any other purpose than the erection of a dwelling house and the necessary outbuildings and appurtenances thereto in accordance with the building regulations prevailing at the time.
 2. There shall be no further subdivision of the land."
- (a) List the information required to prepare an application for the modification of the Restrictive Covenants.
 - (b) Advise Ray Clue on the importance of the role of a surveyor in the proposed Strata development.
-

QUESTION 7

Mrs. Jessica Blue died testate on January 16, 2000. Her Will contained the following devise:

"I give and devise my house situate at 9 Jaques Road, St. Peter and registered at Volume 602 Folio 93 of the Register Book of Titles to my son, Joshua for life, remainder to his son, Patrick, absolutely. I appoint my nephew, Philip Tightfist, to be the Trustee for the purposes of this settlement."

At the time of Jessica Blue's death a mortgage to Crimbank of \$50,000 was outstanding on the property. No payments have been made on account since Mrs. Blue's death and Crimbank has served formal Notice of the arrears and of their intention to exercise their powers of sale under the mortgage.

The property is currently valued at \$4,000,000.

Joshua proposes to sell the property and discharge the mortgage. He consults you as to how, if at all, he may proceed with the sale and if the balance of the proceeds can be used to purchase a smaller property. In the event that he is unable to sell the land or find a buyer for it, he wishes to know how far and to what extent can the bank go to satisfy the indebtedness to it.

Advise Joshua.

QUESTION 8

You act for Mr. Mike Holiday, and his son Billy, aged 23, who have entered into an Agreement for Sale to purchase a new home. See Document 1.

The Vendor's Attorney-at-law has sent you a copy of the title (Document 2) and a draft Transfer (Document 3) for your client's execution.

- (a) Comment on the Transfer suggesting amendments and/or additions.
 - (b) Outline to your clients the documents and information likely to be required by their Mortgage Company to process their loan application.
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QUESTION 8
DOCUMENT 1

AGREEMENT FOR SALE

AGREEMENT FOR SALE made this 15th day of March, 2001 whereby it is agreed that the VENDOR shall sell and the PURCHASER shall purchase ALL THAT parcel of land more particularly described herein upon the terms set out as follows:-

VENDORS: PETER CLEMENTINE of 4 Stoppage Place, St. Margaret, Mason

PURCHASER: MIKE HOLIDAY and BILLY HOLIDAY both of 67 Birdseye View, St. Margaret, Contractor and Student respectively

TENANCY: Joint Tenants

DESCRIPTION OF PROPERTY: ALL THAT parcel of land 23 Hope Way, St Margaret and being the land registered at Volume 1092 Folio 794 of the Register Book of Titles

PURCHASE MONEY: FIVE MILLION DOLLARS (\$5,000,000) A payment of \$750,000 apportioned as to \$500,000 being a 10% deposit payable hereunder and \$250,000 being a further payment towards purchase price to be utilized towards the payment of Transfer Tax and Stamp Duty payable to the Vendor's Attorney-at-law on the execution of this Agreement. The balance on or before July 31, 2001.

POSSESSOR

tion.

possession.

SPECIAL
CONDITIONS:

- (1) It is a condition precedent to the coming into effect of this Agreement of Sale that the same shall first be signed by both the Vendor and the Purchaser and the deposit paid.
- (2) The Attorney's Fee for preparing this Agreement for Sale fixed at the sum of \$15000.00 plus GCT shall be borne by the Vendor and Purchaser equally and each party shall pay their share thereof on the signing of this Agreement.
- (3) The Purchaser shall apply to the National Home Trust for a loan of not less than \$3000000 on the security of the said premises. In the event of the Purchaser not obtaining and delivering to the Vendor's attorney-at-law a written commitment for such loan by the 6th day of June 2001 either party shall be entitled to rescind this agreement within fourteen (14) days thereof failing which this agreement shall remain absolute binding the parties hereto.

Joe Peart

WITNESS

PETER CLEMENTINE

VENDOR

Joe Peart

WITNESS

MIKE HOLIDAY

PURCHASER

Joe

V

QUESTION 8
DOCUMENT 2

ORIGINAL

NOT TO BE
REMOVED FROM
TITLES OFFICE

DO NOT FOLD

REGISTRATION BOOK
VOLUME: 1092
FOLIO: 794

JAMAICA

294932/2
D.P. 4149

Certificate of Title under the Registration of Titles Law, Chapter 340


NEVILLE OSMOND MILLAR
of Sunset Avenue, Montego Bay in the Parish of
Saint James, Businessman

Now the proprietor of an estate in fee simple
subject to the incumbrances notified hereunder in ALL THAT parcel of land part of
THE VILLA situate at MANDEVILLE in the Parish of ST MARGARET being the lot numbered
on the Plan of part of The Villa aforesaid deposited in the Office of Titles
on the 16th day of November, 1972 of the shape and dimensions and butting as appears
by the Said Plan and being part of the land comprised in Certificate of Title
registered at Volume 449 Folio 16

DATED this
seventy-three.

5th day of February

One Thousand Nine Hundred and

of Registrar of Titles


Transfer No. 338451 dated the 13th August and registered on the 27th of October, 1976 from the above-
named NEVILLE OSMOND MILLAR to
PETER

QUESTION 8 DOCUMENT 3

TRANSFER OF LAND

THIS INSTRUMENT OF TRANSFER under the Registration of Titles Act is made on the date set out in item 1 of the Schedule hereto **BETWEEN** the party or parties more particularly described at item 2 of the said Schedule (hereinafter called "the Transferor) of the **ONE PART** and the party or parties more particularly described in item 3 of the said Schedule (hereinafter called "the Transferee") of the **OTHER PART**.

WHEREAS the Transferor is registered as the Proprietor of an estate in fee simple in the lands more particularly described in item 5 of the said Schedule (hereinafter called "the said lands") free from encumbrances other than the restrictive covenants and easements (if any) endorsed on the Certificate of Title therefor.

AND WHEREAS the Transferor has agreed to sell his said interest in the land to the Transferee for the price set forth in item 4 of the said Schedule (hereinafter called the "sale price").

NOW THIS INSTRUMENT WITNESSETH that IN CONSIDERATION OF the payment by the Transferee to the Transferor of the sale price the Transferor **HEREBY TRANSFERS** to the said Transferee as proprietor all the Transferor's estate and interest in the said land.

SCHEDULE

1. **DATE OF INSTRUMENT OF TRANSFER:**
2. **THE TRANSFEROR:** PETER CLEMENTINE of 4 Stoppage Place, St. Margaret, Mason
3. **THE TRANSFEE:** MIKE HOLIDAY and BILLY HOLIDAY both of 67 Birdseye View, St. Margaret
4. **THE SALE PRICE:** FIVE MILLION DOLLARS (\$5,000,000)
5. **THE SAID LAND:** ALL THAT parcel of land part of THE VILLA situate at Mandeville in the Parish of St Margaret being the lot numbered Five on the plan part of The Villa aforesaid deposited in the Office of Titles on the 16th day of November, 1972 (with its area and dimensions and butting as appears by the said plan and being part of