

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATION 2019
CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 10, 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply, in accordance with the law of a Commonwealth Caribbean territory zoned for this school **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.
- (e) Answers should be written in black or dark blue ink. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

By his Will, Lindsey Gordon devised his 12,000-square-metre parcel of land on Edgewater Lane (the property) in the jurisdiction to his wife Angela for life, with remainder to their two sons, Jeb and George. He appointed Peter Muller and Phillip Comey as executors and trustees under his Will.

Lindsey died on March 10, 2018. His Will was probated on September 1, 2018 and Angela has been registered on the title as life tenant. She continues to live in the matrimonial home on Port Avenue with Jeb and George who are aged 19 and 20 respectively. Angela is desirous of selling the property and has been approached by an old friend of hers, Donald Cruz, a well-known property developer in the jurisdiction, who has indicated an interest in acquiring the property.

Peter and Phillip do not approve of the proposed sale. They believe that Angela is acting too hastily in disposing of the property. They have advised her that the real estate market is depressed and prices are down approximately thirty percent from last year. They tell her that she would face serious risk, in terms of liability, were she to sell now. They have suggested that she wait for the market to improve. In addition, the Ministry of Housing has recently announced plans to erect an upscale housing development on Edgewater Lane, and this would, when completed, materially increase the value of her property.

Angela is uncertain as to how she should proceed. Advise Angela on what risks (if any) she would face if she were to proceed with the sale and the matters she must consider, including any procedural steps she would be required to follow.

QUESTION 2

Garth Biden is the registered proprietor of a commercial property situated in Cambridge in the jurisdiction. By an agreement dated September 1, 2018, Garth agreed to sell the property to his good friend, Roland Miller, who intends to use it for the purposes of his business. Under the terms of the agreement, completion of the sale was to have taken place on or before three

months from the date of the agreement, and the balance of the purchase price was payable on completion. The agreement also provided that interest was payable on all monies not paid within the time periods stipulated in the agreement.

Nearing completion, Roland called Garth to tell him that he had encountered a little challenge with his finances and needed some time to sort out the matter. Due to his long-standing relationship with Roland, Garth agreed to grant him up to March 15, 2019 within which to pay the balance outstanding. He, however, agreed to the extension on the condition that interest would continue to accrue on the monies not paid, and that such interest would be paid, no later than one month after the sale had been completed.

Roland managed to settle the balance outstanding within the extra time period granted and the sale was completed on March 15, 2019. Up to the present time, however, he has not paid over to Garth any portion of the interest that had accrued.

Garth comes to see you. He is angry as he feels that Roland is taking advantage of the friendship they share. He wants you to institute legal proceedings against Roland to recover the interest owed. He is very concerned as he has heard that Roland has overextended himself financially and is considering selling the property. Garth wants to know if there are any procedural steps, apart from court proceedings, that he can take to prevent the sale.

Prepare your advice to Garth:

- (i) outlining the procedural steps he should take to immediately prevent any dealings by Roland with the property, identifying any document(s) that may be necessary and their contents; and
- (ii) setting out the options open to Roland in response to any step that he (Garth) may take pursuant to your advice in (i) above.

QUESTION 3

By an agreement in writing dated January 10, 2019, Robby Van Jones agreed to sell to Earle Cooper, for the price of \$30,000,000, his fee simple interest in a parcel of land known as "Savannah Estate" registered at Volume/Block 1330 Folio/Parcel 44 of the Register Book of Titles/Land Register.

Under the terms of the agreement, completion was to take place on or before April 10, 2019. On March 25, 2019, Earle contacted Robby by email to indicate that the financial institution that was granting his mortgage was not yet ready to disburse the funds, and he would require a seven-day extension from the date of completion. On the same day, Robby replied by email that he had 'no problem' with granting the extension.

Since the email correspondence Robby has not heard from Earle. On May 10, 2019, a successful land developer, Malcolm Budd, approached Robby to sell him the land for the price of \$40,000,000. Budd has also indicated that he is able to purchase the land from his savings and does not need to borrow money from the bank.

Robby comes to see you. He is very interested in making the higher profit on the sale. As far as he is concerned Earle is clearly not able to source the funds needed to complete the sale and he does not intend to give him any more time. He wants you to write Earle advising him that he (Robby) is no longer interested in completing the sale.

Prepare a letter to Robby advising him on the following:

- (i) whether you can accept his instructions, giving reasons; and
- (ii) the steps that you recommend he should take to deal with his concerns over Earle's ability to purchase the property.

Your advice must identify any document(s) you consider necessary in the circumstances and its/their contents.

QUESTION 4

In 2010, Easy Loans Bank (the bank) extended a loan to Paul Clooney to assist him in purchasing a 30-unit apartment complex located on Bay Road in the jurisdiction. The loan was secured by a mortgage registered on the title for the property. The apartment complex was fully tenanted and the rental income from the complex allowed Paul to pay the mortgage and maintain the complex.

In 2017, Paul's wife was diagnosed with cancer. Paul began using the rental income from the complex to pay for the costs of her treatment abroad. The utilization of the income to cover the medical expenses put Paul in a difficult financial situation. He was unable to upkeep and maintain the complex and it fell into a state of disrepair. A large number of tenants left. Paul also has not paid the monthly mortgage instalments due to the bank for the past seven months.

Paul tells you that he has been in discussions with the bank during the period of default but that he has found the bank manager inflexible in his demands. Three weeks ago he (Paul) submitted a proposal to the manager, providing for a reduced monthly mortgage payment for a few months. The bank has recently responded rejecting the proposal, on the ground that it has already agreed in principle, to sell the property by private treaty to Don Holford, a businessman in the jurisdiction, and a customer of the bank. Paul tells you that he understands that the agreement for sale is being prepared for execution by the bank's attorneys-at-law.

In anticipation of a meeting with Paul prepare the following:

- (i) a checklist of the specific matters to be taken into account in order to determine whether the bank has acted properly in attempting to exercise its power of sale; and
- (ii) an outline of the options that may be open to Paul in the circumstances.

QUESTION 5

John Rider lives with his wife in a three-bedroom house on a parcel of unregistered land situated on Random Avenue in the district of Lyssons. He wants to obtain a registered title for the property and comes to see you for advice.

He instructs you as follows:

- (1) In May 2007, he bought the property for \$500,000 from Bertram Brown.
- (2) The property, which at the time had a one-bedroom wooden house erected on it, was worth more than \$500,000, but Bertram had sold it at a reduced price, as he was not in a position to hand over to him (John) any title deeds.
- (3) Bertram had explained to him that, in 1989, he had been evicted from the rented accommodation in which he lived, and not being able to afford to rent other premises, he began occupying this vacant parcel of land on Random Avenue and had lived there up to the present time.
- (4) He (John) took possession of the property in May 2007, immediately after paying the purchase price. He subsequently met and married Primrose Brunton in 2009, and together they have lived on the land improving the house over the years.
- (5) He is anxious to acquire a legal title to the land.

Advise John on the procedural steps he would have to take to register the land. Your advice must refer to any documents required and their contents.

QUESTION 6

Bradley Taylor died in September 2018, testate, leaving the premises in which he lived at 2 Millsbury Drive in the jurisdiction, to his three adult children, Travis, Malia and Sasha.

Bradley was a widower at the date of his death. His wife, Michelle, who was a joint owner of the premises, had predeceased him three years before. The couple had made Wills under which they each had appointed their three children, the executors and beneficiaries of their entire estate.

After the death of each parent, the children, who all live abroad, had engaged attorneys-at-law in the jurisdiction to obtain a grant of probate. Grants of probate have been obtained in both estates but nothing more has been done in relation to the estates.

The children, in April of this year, decided to sell the property and divide the proceeds among themselves. With the assistance of a real estate agent they found a purchaser and are now anxious to proceed with the sale.

Travis, who is in the jurisdiction for the specific purpose of moving the sale forward, comes to see you to discuss the matter.

- (i) Prepare a letter to Travis advising him on the procedural steps he would be required to take in order to put his sisters and himself in a position to sell the Millsbury Drive property.
- (ii) Identify and detail the content(s) of the document(s) that would be required to give effect to the advice you have given to Travis above.

QUESTION 7

Jennifer Salada has approached you to assist her in the purchase of Unit 14 in the commercial shopping complex known as L'Aventura Plaza . The complex consists of a four-storey building with 40 units. Unit 14 is situated on the second floor.

Jennifer runs a chain of rejuvenation spas in the jurisdiction. She tells you that she wants to operate a spa in Unit 14 as she believes the location is likely to attract a large number of business people, both men and women, who work in the area.

Jennifer comes to see you and instructs you as follows:

- (1) She will need a mortgage to complete the sale.
- (2) She wants the matter to be completed at the latest by August 15, 2019, as she has set the date of August 31, 2019, which is a public holiday in the jurisdiction, for the formal opening of the spa.
- (3) She would like to take early possession of the unit so that it can be outfitted in time for the formal opening.
- (4) There are some fittings and furniture presently in the Unit that she can utilize in her business and the Vendor has agreed to include these items as part of the sale, but at an additional cost.

Prepare a letter to Jennifer advising her on the following:

- (i) the preliminary searches and inquiries that should be undertaken;
- (ii) the general contract terms she should expect to see in the agreement for sale; and
- (iii) any special conditions you would recommend for inclusion in the agreement for sale.

QUESTION 8

Elaine Black is the registered proprietor of a three-bedroom house, located at 4 Norbury Drive in the jurisdiction. The house stands on 4,000 square metres of land.

The land forms part of an old subdivision known as Windsor Heights, comprising approximately 30 lots. The following restrictions appear on the certificates of title/land certificates for all of the properties in the subdivision:

- "(1) No trade or business whatsoever shall be carried on upon the said land or any part thereof.*
- (2) No building other than one private dwelling house with appropriate outbuildings thereto shall be erected on the said land and no*

building erected on the said land shall be used for the purpose of a shop.”

Elaine 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 believes that, not only will the venture be profitable for her, but that the neighbourhood would benefit from the facility as there are no nursery schools within a five-mile radius of the housing scheme. She tells you that she has spoken to some of the residents in the neighbourhood and that they appear to be quite supportive of the idea.

Elaine is not sure as to the steps she must take to have the restrictions on the title varied to accommodate her plans.

Write a letter to Elaine advising her on the following:

- (i) the steps she would be required to take to vary the restrictions so as to facilitate her plans for the property, including the document(s) required and the contents of such document(s); and
- (ii) the likelihood of success.

END OF PAPER