

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTAL EXAMINATIONS, 2000

CONVEYANCING AND REGISTRATION OF TITLE

(Monday, August 7, 2000)

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 questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

Question 1

James Pickings died on February 6, 2000, leaving his unregistered 60 acre Property, part of Cummings in the part of St Mary, to his three children, Joshua, Joseph, and Jerry as tenants-in-common in equal shares. He appointed Joseph and Jerry as his executors. Joshua is a minor and Joseph and Jerry are adults. Jerry consults you and wishes to know whether and, if so, how he may have his one-third share as he wishes to mortgage it to raise a loan of \$200,000. He would also like to get a registered title for his share.

- (i) Advise Jerry as to how he may deal with his share in accordance with his wishes.
 - (ii) Would your advice be any different if the property was given to Joshua, Joseph, and Jerry as joint tenants?
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Question 2

Franco Touchgold owns a 10-room three-storey building situate on 6 acres of unregistered land. He wishes to partition the building so as to be able to sell parts thereof as separate self contained units and also to build 6 cottages on the land for sale. As a prudent developer, he seeks your advice.

- (i) Advise him as to what steps he should take towards this end.
 - (ii) Outline to him, in chronological order, the steps you would take towards completion of the cash sale of a unit from the moment of exchange of the Agreement for Sale.
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Question 3

Philip Peabody consults you and tells you that he is desirous of purchasing 5 acres of land from the Pinn family. He has been approached by Mrs. Pinn and her brother-in-law, Jacque, who have offered to sell the land for \$4,000,000.

The land is part of 10 acres of land part of Joseph Coast in the parish of St Jule inherited by Mr. King Pinn from his father in 1987. The land has been in the family from the days of Mr. King Pinn's great grandfather. By Will dated April 7, 1985 Mr. King Pinn appointed his wife, his sole executrix and devised the land to her for life remainder to his son, Count Pinn, absolutely. His brother Jacque was named Trustee for the purpose of the settlement. Mr. King Pinn died on June 7, 1998.

- (i) Advise Philip with whom he should enter into contract for the purchase of the land and what preliminary steps and/or inquiries you would make with view of securing a conveyance to him.
- (ii) Assuming you are provided with all satisfactory information as to title, draft a form of conveyance to Philip.

Question 4

You act for the purchaser in respect of premises at 12 Buckley Drive, Kingstown. The contract is dated February 13, 2000, and completion set for August 31, 2000. Your client has advised you that there is a delay in his obtaining the balance purchase price and that he will not receive the money until the end of September. He would prefer however to terminate the contract as he has doubts about proceeding with the transaction particularly against the following background:-

- (i) the proceeds of sale is not sufficient to cover the amount due to the Vendor's mortgagees and his attorney-at-law is experiencing grave difficulties in obtaining the Certificate of Title;
- (ii) the land was part of a larger parcel of land. Subdivision approval has been in place but it is subject to the making of an access road to the parcel and no steps have been made in this regard;
- (iii) the roof of the house is full of termites and is in need of great repair.

Advise him and draft any appropriate Notice to be served.

Question 5

Richard is the registered proprietor in fee simple of a one acre parcel of land described as Lot E and now known as 5 East Road. The land is part of lands comprised in a Plan of subdivision registered in 1970 and made subject to the following restrictive covenants:-

- (i) "The building to be erected thereon shall be a single-family dwelling house;
- (ii) The land shall not be further subdivided;
- (iii) No churches, schools or commercial buildings shall be allowed on the said land."

Richard consults you with a view to erecting a small building at the back of his house for the purpose of making pharmaceutical products for sale. The community though still residential to a large extent is also of a

commercial nature. His new venture would also provide well needed employment and other benefits to the community.

- (i) Explain to Richard the procedure for the discharge and modification of restrictive covenants.
- (ii) Draft the proposed modifications.

Question 6

- (a) Developers Ltd., were the registered proprietors of a building site in St Andrew. They obtained a legal mortgage of \$50,000,000 from Money Ltd. with a view to developing the land. Shortly after the company obtained planning permission for the erection of 33 single-family houses and a condominium consisting of 100 flats.

Due to the default of Developers Ltd., Money Ltd., sold the site under the power of sale in the mortgage having advertised the property as carrying planning permission for 33 houses. The omission to make reference to the provision for condominium development was brought to their attention by Developers Ltd., but Money Ltd. nevertheless proceeded with the sale. As a result Money Ltd. obtained a substantially smaller sum for the site than would have been the case had they advertised the full scope of the planning permission. Developers Ltd. have threatened to sue and ask the Court to void the sale.

Advise Money Ltd.

(b) Money Ltd. have supplied to you the following information in relation to the sale and accounting of premises sold pursuant to their power of sale:-

(i) The purchase price was \$3,000,000 and the sale completed on May 31, 2000. Cost to be shared but each party to bear his own attorney-at-law costs.

(ii) Mortgagor paid current land taxes of \$24,000 up to March 31, 2001.

(iii) Transfer Tax:	\$225,000
Stamp Duty:	\$164,990
Registration Fee:	\$ 15,000
Attorneys-at-Law costs:	\$ 90,000

Prepare a final statement of Account for the Purchaser.

Question 7

(a) Pickle, the registered proprietor of ten acres of land registered at Volume 598 Folio 231 of the Register Book of Titles, by an Agreement in writing dated April 24, 1999 agreed to sell the land to Boyd Farmer. Farmer was then put into possession but he never lodged a Caveat/Caution to protect his interest.

On October 10, 1999 Pickle received a loan of \$200,000 for 24 months with interest at the rate of 15% per annum from Moneybags. The loan was by way of equitable mortgage by deposit of his registered title. Before granting the loan Moneybags inspected the property but there

was no evidence to suggest that any person other than Pickle was in possession.

Moneybags has retained you to lodge a Caveat/Caution to protect his equitable interest.

Draft the Statutory Declaration in support of the Caveat/Caution to be lodged at the Office of Titles.

- (b) Assume that Moneybags had in fact lodged a Caveat/Caution on November 6, 1999, and Farmer has filed an action for a declaration that his equitable interest ranked in priority to Moneybag's equitable mortgage.
- (i) Advise Moneybags.
 - (ii) Would your advice be any different if subsequent to making the loan and prior to lodging the Caveat/Caution, Farmer had personally advised Moneybags of the Agreement for Sale between Pickle and himself?

Question 8

Your client Mandy has consulted you and has given you a copy of the Certificate of Title to her 3 bedroom house registered at Volume 349 Folio 90 of the Register Book of Titles, (supplied herewith). She has contracted to sell the house to her brother Winston, an accountant of 6 Key Drive, for \$3,500,000. Her mortgage payments are current and the principal balance outstanding is \$500,000. Winston has agreed to take over the mortgage

payments as a part of the transaction. Their Uncle Simon Simple is prepared to consent to the transfer of the land to Winston subject to the mortgage.

- (i) Write an appropriate letter to the mortgagee requesting title to give effect to your instructions and draft and enclose the Consent for his execution.
 - (ii) Complete the Instrument of Transfer (on the precedent supplied to herewith) to be submitted to the Office of Titles.
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QUESTION 5

REGISTER BOOK
VOLUME 407
FOLIO 90



ORIGINAL
NOT TO BE
REMOVED FROM
TITLES OFFICE
DO NOT FOLD

JAMAICA

Certificate of Title under the Registration of Titles Act

Minc. 814282
D.P. 8597

Tricia Cuddles of 6 Cross Keys Drive in the Parish of St Margaret, banker is now the proprietor of an estate in fee simple subject to the incumbrances notified hereunder in ALL THAT parcel of land part of CROSS KEYS now known as 6 Cross Keys Drive in the parish of SAINT MARGARET of the shape and dimensions and butting as appears by the plan thereof herunto annexed and being part of the land comprised in Certificate of Title registered at Volume 407 Folio 719.

DATED this 26th day of July

One Thousand Nine Hundred and Ninety

Incumbrances above referred to:-

[Signature]
Registrar of Titles.



Incumbrances above referred to:-

Transfer No. 48976 registered 21 November 1997 to Mandy Theresa Simple of 6 Blue Skies Crescent, St Angela, Computer Analyst. Consideration money Two Million Two Hundred Thousand Dollars.

Mortgage No. 399345 registered in duplicate on the 3rd of May 1998 to Simon Simple to secure One Million Dollars with interest.

QUESTION 5

(DRAFT) 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 receipt of which sum the Transferor hereby acknowledges) 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:**
3. **THE TRANSFEE:**
4. **THE SALE PRICE:**
5. **THE SAID LAND:**

