

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND-YEAR SUPPLEMENTARY EXAMINATIONS, 2004

CONVEYANCING AND REGISTRATION OF TITLE

(THURSDAY, AUGUST 5, 2004)

Instructions to Students

- (a) Time: 3 ½ 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 relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Alan Mays is the sole executor and trustee in the Will of his brother Richard Mays. Alan obtained probate of Richard's Will late in 2000. Richard by his Will devised his 50-acre cattle farm in St. James to his infant son, Roddie, who attained the age of 12 years on January 1, 2004. The title to the farm is registered.

The Will nominated Roddie's mother Mary Jane to be the testamentary guardian of Roddie.

Roddie and his mother are unable to manage the farm, and have received what appears to be an excellent offer from a land development company.

Mary Jane seeks your advice on the steps to be taken with a view to selling the property, vesting title in the purchaser and as to the proper parties to the transaction.

QUESTION 2

Jamie is contemplating purchasing a condominium/strata unit from Valda. The unit is mortgaged to the First Building Limited. Jamie will be obtaining a mortgage from City Bank Limited to assist with the purchase price.

- (a) What preliminary enquiries, searches and requisitions would you consider necessary for Jamie to complete the transaction, showing the part played by giving undertakings.
- (b) Draft the Transfer.

QUESTION 3

- (a) When does a mortgagee's power of sale arise?
 - (b) Under what circumstances, if any, could the court hold a mortgagee negligent in the exercise of his power of sale?
 - (c) What other rights and powers can be exercised by a mortgagee in the event of breach by a mortgagor of a covenant in the mortgage?
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QUESTION 4

Shaggy owns a large property that he has sub-divided into 20 one-acre lots. He has retained one lot on which he has constructed his home. Shaggy sold ten lots with a restriction prohibiting any further subdivision of the lots. This restriction is in favour of Shaggy and the purchasers and among all persons who may own any of the lots comprised in the subdivision.

Having succeeded in selling only 10 lots Shaggy now wishes to further subdivide the remaining nine lots into half-acre lots, as he believes smaller lots would be easier to sell.

- (a) Advise Shaggy on the available grounds for making an application to modify the restrictive covenant and on his chances of success.
 - (b) Draft an affidavit in support of the application.
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QUESTION 5

- (a) Distinguish between defects as matters of title and as matters of conveyance.

- (b) Peter Pan contracted to purchase a house from Barney Miller for \$2.5 million free from encumbrances. In the course of conducting post-contract searches and inquiries, Barney discovers that in breach of a restrictive covenant the house is positioned nine feet from the boundary line instead of ten feet. Peter has seen another house which he prefers, and is anxious to get out of the contract.

Advise Peter Pan who has asked you to write to Barney indicating that he is rescinding the contract and wants his deposit returned.

QUESTION 6

In January 2004, Dick orally agreed to sell Jack one-half acre of land, the title to which is registered. Jack confirmed the arrangement in a letter to Dick in early February 2004, in which he enclosed \$350,000 indicating that the payment represented "part payment on the deal". He promised to pay the balance of \$225,000 in "exchange for title" to the land. Dick sent Jack a receipt for the money paid.

Towards the end of February 2004, Dick allowed Jack to enter into possession of the land. Jack is now facing financial difficulties and wants to pay Dick \$50,000 and the balance over a six month period.

Dick is very upset saying that there is no agreement for sale in the first place as a document was never in place. He wants to know if Jack's deposit can be forfeited and the land put back on the market for sale.

Advise Dick.

QUESTION 7

Cecil and his sister Cecille contracted to sell a house to Peter which is owned by Cecil and Cecille as joint tenants and title to which is registered. However, Cecil died before any further steps were taken. Jonas is the sole executor of Cecil's Will and seeks your advice.

- (a) Advise Jonas on the procedure to be followed and the documents required to complete the sale.
 - (b) What steps would Jonas be required to take if the land was held by Cecil and Cecille as tenants-in-common.
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QUESTION 8

Explain the following:

- (a) Time is of the essence
- (b) Requisitions

(c) Root of Title

(d) Registered Title
