

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2008

CONVEYANCING AND REGISTRATION OF TITLE

(TUESDAY, AUGUST 5, 2008)

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

Lena and her deceased husband Danny are registered on title as joint tenants of the fee simple interest in property registered at Volume/Block 10 Folio/Parcel 20 of the Register Book of Titles/Land Register. The property, which consists of a three bedroom house on 8,000 square feet of land, has been home for Lena and Danny up to the date of Danny's death, six months ago. Lena is anxious to sell the house and move to a smaller property since she does not think she can manage the house on her own.

Danny's brother Pope, the sole executor of Danny's Will, resides in the United States of America and is uncertain as to when he can attend to matters concerned with Danny's estate.

Lena also tells you that she cannot find the Duplicate Certificate of Title/Land Certificate, which she recalls was handed over to Property Valuers Ltd. about two years ago, when she engaged their services to carry out a valuation of the property. However, the office manager says that the company's policy is to shred files that are more than a year old as part of their efforts towards creating a paperless office.

Lena says that a young couple has shown an interest in purchasing the property and she would like to pursue the sale as soon as possible.

Prepare a letter advising Lena on the procedural steps she would be required to take to deal with her interest in the property, in contemplation of pursuing the sale, referencing the document(s) required and their contents.

QUESTION 2

You are an attorney-at-law in the firm, Lawyer and Associates and have been asked to prepare a checklist and brief explanatory notes, where appropriate, of the important considerations for the mortgagee/client who wishes to exercise his power of sale. The checklist and notes will form part of a manual which will guide attorneys-at-law taking instructions in matters concerned with mortgagees exercising their power to sell properties.

Prepare the checklist and notes.

QUESTION 3

You have been asked to meet with a new client, Eartha, who is seeking to purchase two adjoining parcels of land from Jupiter, who claims to be the proprietor of both parcels.

The notes on file indicate that one parcel is registered at Volume/Block 25 Folio/Parcel 75 of the Register Book of Titles/Land Register. The other parcel is unregistered and Jupiter has said he owns it jointly with his two children Marso and Saturna.

In preparation for your meeting with Eartha, prepare notes which you will use to assist you in outlining to her the matters that you would consider and the procedural steps you would take in order to investigate title to each parcel of land.

QUESTION 4

Lilly-Mae and her business partner Justina are the proprietors as tenants-in-common of commercial premises known as Suite No. 8 Tranquil Courts. Tranquil Courts consists of 10 suites, each of which is a strata/condominium lot registered under the strata/condominium legislation of the jurisdiction.

Lilly-Mae is migrating to Canada shortly and has agreed to sell her half interest in the property to Justina for \$5M. Lilly-Mae, an aesthetician, and Justina, a hairdresser, have been conducting a joint business from Suite No. 8. Lilly-Mae's instructions are that all of her equipment and products will be sold to Justina as part of the transaction.

Lilly-Mae tells you that she has an existing mortgage with Entrepreneurs Bank Ltd., which is secured on her half interest in the property. However, Justina will need a mortgage to complete the purchase.

Lilly-Mae also rents 20 sq. ft. of space in the suite to Jenny, a nail technician, who has another year on her lease. Lilly-Mae's instructions are that Justina will continue to rent to Jenny.

Prepare in draft an appropriate Agreement for Sale as attorney-at-law having the carriage of sale for Lilly-Mae.

QUESTION 5

Vicento has entered into an agreement to purchase the freehold interest in registered land and contracts have been exchanged. Vicento is seeking your advice as to whether he can rescind the contract having discovered the following:

- (i) the entire plumbing consists of galvanized steel pipes, many of which are corroded, contributing to several leaks and the plumber's assessment is that all the pipes will have to be replaced;
- (ii) the vendor is currently registered on title as joint tenant with his deceased wife. He is named as executor of his wife's Will but has not yet applied for probate of the estate and the date for completion is fast approaching;
- (iii) the vendor, at the time of contract, did not disclose that he had been denied planning permission for a similar type of development as that contemplated by Vicento, although he was fully aware of Vicento's plans for the property.

Advise Vicento.

QUESTION 6

Althea and Aldophus are registered jointly as the proprietors of a one acre lot in Big Property Heights, a well established residential area. The property consists of a six bedroom two storey house which Althea and Adolphus occupy.

The following restrictions appear on title:

“... ”

1. The land above-described (hereinafter called “the said land”) shall not be sub-divided.

2. All gates and doors in or upon any fence or opening upon any road shall open inwards.

3. Not to erect buildings of any kind on the said land other than private dwellings with appropriate offices and outbuildings appurtenant thereto to be occupied therewith, to an aggregate value of not less than TWO THOUSAND FIVE HUNDRED POUNDS (£2,500)

4. No building erected on the said land shall be used for the purposes of a shop school chapel nursing home or racing stable and no trade or business whatsoever shall be carried on on the said land or any part thereof.

5. Not to erect on the said land any building with a roof of corrugated iron or aluminum...

The above-mentioned restrictions shall run with the said land and shall bind the registered proprietor, his heirs personal representatives and transferees...”

Althea and Adolphus tell you that the registered proprietor of the lot adjoining on the left, has built six town houses on the land, one of which is occupied by the registered proprietor and the others are tenanted. One tenant, a music teacher, conducts piano lessons Monday to Saturday, throughout the day. The registered

proprietor, a retired teacher, conducts extra lessons for students preparing for the entrance exams to high school.

The registered proprietor on the property adjoining on the right is a horse racing aficionado, who also breeds prize horses and has a stud farm on his property. Althea is a nurse at a nursing home located in very close proximity to the Big Property Heights area.

Althea and Adolphus would like to build cottages on their property for short term rental to vacationers. However, they are concerned about the restrictions on title, especially since recent pronouncements from the local authorities indicate a renewed effort to clamp down on illegal land usage.

- (i) Advise Althea and Adolphus on the procedural steps they should take in order to pursue their plan to build cottages on their property. Include in your advice any document(s) required and their contents.

- (ii) State, briefly, the legal basis for the steps recommended in (i) above.

QUESTION 7

On January 15, 2007, Mercedes Smart lodged a caveat/caution against all dealings in respect of property registered at Volume/Block 25 Folio/Parcel 90 in the Register of Titles/Land Register.

In exercising its power of sale, pursuant to a mortgage registered on title on August 15, 2005, Mortgage Bank Ltd sold the property to Sarah and Wilfred Johns by private treaty. On May 15, 2008, a duly executed instrument of transfer

was presented to the Office of the Registrar of Titles/Lands. The instrument was accepted and registered.

Mercedes, having heard that the property was sold without any official notification to her, wrote to Mortgage Bank Ltd. and the Registrar, expressing outrage that a sale and transfer of the interest in the property was completed without reference to her, in spite of her taking careful steps to protect her interest.

The Bank replied that their searches did not reveal the existence of a caveat/caution against all dealings in the property.

The Registrar's response was that his Office accepts no responsibility for the matter complained of, since having accepted the caveat/caution there was no further obligation on the part of the Office of the Registrar.

Advise Mercedes on:

- (i) the role of the Office of the Registrar of Titles/Lands after a caveat/caution has been accepted for lodging.
- (ii) the options that would have been open to Mortgage Bank Ltd., following upon your advice in (i) above.

QUESTION 8

Charlotte Price, now deceased, and her brother Charles, are registered as tenants-in-common of property registered at Volume/Block 100 Folio/Parcel 250 of the Register of Titles/Land Register.

Charlotte appointed Charles as sole executor and beneficiary under her Will. Charles has already obtained probate.

- (i) Advise Charles on the procedural steps required to take Charlotte's interest in the property.
- (ii) Draft the appropriate instrument required to vest Charlotte's interest in Charles as beneficiary.
