

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2000

CONVEYANCING AND REGISTRATION OF TITLE

(Monday, May 15, 2000)

Instructions to Students

- (a) Time: 3½ Hours
- (b) Answer FIVE questions only.
- (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 question you attempt.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

**QUESTION 1**

Cecil Doyubest and his wife Jessica are registered as joint tenants of their matrimonial home, being ALL THAT parcel of land part of FALLOUT in the parish of St Thomas and registered at Volume 348 Folio 90 of the Register Book of Titles.

On December 22, 1999, unknown to Mrs. Doyubest, Mr. Doyubest borrowed \$250,000 from his friend Johnny Hustler to buy a motorcar for Mrs. Doyubest's Christmas present.

He deposited the duplicate certificate of title registered at Volume 348 Folio 90 with Johnny Hustler as security for the loan. The loan was interest free and he promised to pay all sums outstanding by April 30, 2000.

There was a memorandum in writing of the Agreement, which formed the basis of a Caveat/Caution lodged against the Title by Johnny Hustler.

Mr. Doyubest died tragically in a motor car accident on March 6, 2000. He died testate leaving Jessica Doyubest, housewife of Fallout P.O. St Thomas, his sole executor and beneficiary.

Mrs. Doyubest who has already obtained Probate of the estate, is now making arrangements to migrate and has entered into agreement to sell her home for \$4,500,000 to Terry Carpenter, a Computer Analyst of Golden Spring, St James.

Mrs. Doyubest was unable to locate the Certificate of Title until a recent visit from Johnny Hustler who confirmed that he is in possession of the Certificate of Title. He has refused to return it or release the Caveat/Caution unless and until all sums outstanding to him have been settled in full. Indeed he

has threatened to sue and seek a Court order for the sale of the premises and for him to be reimbursed out of Mr. Doyubest's half interest in the land.

Mrs. Doyubest has contacted you. She is adamant that in the circumstances she will only pay Hustler out of Mr. Doyubest's estate if and when it is finalized. She proposes to seek the intervention of the court for the return of the Certificate of Title and to complete her transaction with Terry Carpenter.

- (i) Advise her.
- (ii) Assuming that the matter between herself and Hustler is settled, outline the procedure necessary and documents to be drafted to effect transfer of the Certificate of Title to Carpenter.
- (iii) Draft the Instrument of Transfer.

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## QUESTION 2

Tabby Justwright of 16 Knowes Avenue, St Mary recently bought for \$1,000,000 All That parcel of land known as No. 4 Breezes Drive, Kingston 7 in the Parish of St James and registered at Volume 409 Folio 48 of the Register Book of Titles. She bought it in the name of her company, Joy Through Accumilations Ltd., with registered office at her home address.

Messrs. Hard Core & Land, attorneys-at-law, of 3 Duke Street, Kingston acted on her behalf.

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As a wedding gift to her son Stephen who is to be married within the month, Ms. Justwright has instructed you to effect transfer of the land to him as sole proprietor.

Bank Ltd. is further to advance him a loan of \$400,000 against the security of the land to pay for his honeymoon in Europe.

In response to your request to forward the Duplicate Certificate of Title to you, Messrs. Hard Core & Land, attorneys-at-law, have advised you that the said Certificate of Title was destroyed in a recent fire at their offices.

Bank Ltd. is prepared to disburse the funds on registration of their mortgage in the Office of Titles and await the issue of a new Certificate of Title.

- (i) Outline the steps to be taken to facilitate the instructions to you and the arrangement with the bank.
- (ii) Draft the Statutory Declaration of the applicant for the issue of the new Certificate of Title.

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### QUESTION 3

Frederick Bigshot owned a large estate which he sub-divided into 29 one-acre lots and a two-acre lot. He put up the one acre lots for sale and he has to date sold 12 lots. He retained the two acre lot with a view upon which to construct his dream house.

On each title there are restrictive covenants preventing any further subdivision of the lot and from using the lot for purposes other than constructing a single dwelling house thereon.

Frederick Bigshot is currently in dire financial straits and can no longer afford to build his dream home. He sees the possibility of paying all of his debts if he is able to do a small town house development of four homes on this lot.

The purchasers of the 12 lots are annoyed at this plan and have objected to it.

- (i) State briefly the grounds on which Frederick could apply for a modification of the original covenants and whether you think his application is likely to succeed.
- (ii) Outline the procedure on an application for the subdivision of the land.

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#### **QUESTION 4**

NoChance Financing Ltd. are mortgagees in respect of Mortgage No. 45667 registered to secure \$500,000 with interest against Apartment 34, Blue Haven Complex being Strata Lot 67 in Strata Plan No.986 and comprised in Certificate of Title registered at Volume 456 Folio 98 of the Register Book of Titles.

The registered Proprietor, Jack Stressed, is six months in arrears of payments under the mortgage. The mortgagees have already served formal statutory notice of the arrears and their intention to sell.

They estimate that the premises are valued at approximately \$2,500,000 and doubt whether in the depressed property market, it is worthwhile putting the premises up for auction.

They desire to take immediate steps to proceed to sell the apartment to Miss Junnette Lucky who has offered to buy it for \$3,000,000.

If the sale to Miss Lucky falls through then they intend to proceed to take steps to acquire the property itself in satisfaction of the debt.

- (i) Advise NoChance Financing Ltd.
- (ii) Assuming NoChance Financing Ltd. proceeds to sell to Junnette Lucky, outline the requisitions you will expect to receive from the attorney-at-law acting on her behalf.

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#### QUESTION 5

In 1953 Donald Gooden purchased unregistered freehold land being All That parcel of land part of Gravel Hill in the Parish of St Patrick and obtained a Conveyance from Venice Francis. The Conveyance contained a restrictive covenant that there be no further subdivision of the land by Donald Gooden. His friend Cynthia Comfort has been living there since 1990 as a tenant-at-will.

By his Will made in 1996, Donald Gooden devised the land to Cynthia Comfort for her life, remainder to his infant children Jack and Cecila as tenants in common in equal shares. He appointed his brother, Jerry, executor of the Will and his wife Monica and his friend Percy Trustees for the purposes of the Settled Land Act.

Donald Gooden died on May 6, 1998 and Probate of his estate was granted on December 13, 1999.

His Will expressly provided that Cynthia Comfort cannot sell the land without the consent of the Trustees.

Cynthia Comfort has entered into a contract with Betty Christian for the sale of the land for \$2,600,000. Completion is set for May 31, 2000. Payment of the initial payment of \$390,000 including the deposit of \$260,000 was paid to Cynthia Comfort's attorney-at-law and the balance is to be paid into Court. The contract did not specify that the initial payment was made to the attorney at law as stakeholder. Written notice of the sale was given to the Trustees and they have in writing expressly forbidden the sale of the premises.

Betty Christian has recently learned that Cynthia Comfort was Donald Gooden's mistress and that she is currently in a major domestic dispute with his family. Indeed it is her intense dislike for his children, Jack and Celia, that has prompted her to sell the land as she is determined that they should not have the premises on her death.

Betty Christian does not in all the circumstances want to continue with the transaction. She has written to Cynthia expressing her desire to terminate the contract.

- (i) Advise Cynthia.
  - (ii) Assuming the parties will proceed to completion, draft the Deed of Conveyance including the imposition of the restrictive covenant against any further subdivision of the land by Betty Christian or any other person who may ultimately own the land.
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### QUESTION 6

You act for Timothy Hurry in the purchase of land registered at Volume 456 folio 98 of the Register Book of Titles.

After contracts have been exchanged you discover the following: -

- There is a footpath through the land being purchased which is used by persons in the district and has been so used for several years, in order to gain easy access to a nearby river;
- the property is described as 15 acres but is in fact only 14.5 acres;
- the parties named as vendors in the contract are the trustees under a settlement by Will of the property being sold;
- The property is subject to an easement registered on the title but not previously disclosed to the purchaser;



- The building on the premises was earmarked for demolition by the local planning authority before contract without the knowledge of the purchaser.

Advise Timothy Hurry in each case.

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### QUESTION 7

Your client Jacob Goodfaith has purchased two parcels of land with registered title in St Elizabeth and St Mary respectively.

- (a) In respect of the land situate in St Elizabeth, he has shown to you a receipt dated December 28, 1989 and issued by the vendor Justin Dreadlocks acknowledging receipt of \$1,300,000 in full settlement for ALL THAT parcel of land containing by measurement 6 Acres 4 Roods and 2 Perches butting and bounding as appears by the plan thereof thereunto annexed and being the land comprised in Certificate of Title registered at Volume 234 Folio 89 of the Register Book of Titles.

At the time that Jacob Goodfaith had paid the money over to Justin Dreadlocks, Dreadlocks was scheduled to leave the Island the next day for Ethiopia for three weeks to check on the possibility of his family and himself emigrating there.

Dreadlocks gave Goodfaith the Certificate of Title, put him in possession of the land and promised on his return to the Island to have his attorneys-at-law finalize the transaction and prepare the Transfer.

No one including his wife or children have seen or heard of Justin Deadlocks since his departure from the Island. There have been no responses to newspaper advertisements placed in the Overseas Gleaner and in the local newspapers in New York, UK and Ethiopia.

You are required to:-

Draft the application to be submitted to the Registrar of Titles to have Title vested in the name of Jacob Goodfaith. (Where a Jurisdiction outside of Jamaica is used, draft an Affidavit in support of the Application.)

- (b) In respect of the land situate in St Mary, on presentation of his Transfer and Certificate of Title for registration at the Office of Titles, he was informed that there is a caveat/caution restraining all dealings with the property in question.

You are required to:-

Advise Jacob Goodfaith, how he should proceed and what are the duties of the Registrar of Titles in this regard.

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### QUESTION 8

You have been retained by New Breed who is proposing to purchase a dilapidated house and land in an old established residential area that is fast becoming commercial. He intends to develop the land as an entertainment 'hot spot'.

He currently has a public relations firm researching the appropriate name of the venture and the company which he will form to own the land and run the business.

The purchase price of \$5,000,000 has been agreed upon the basis that the property is being acquired for commercial purposes.

He has \$4,000,000 in hand and he will receive the additional \$1,000,000 and the finances for the development on the approval of the project by his bankers. His bankers are prepared to disburse the balance of the purchase price against receipt of Certificate of Title, stamped Agreement for sale and Instrument of Transfer duly executed by the Vendor.

Once the transaction is complete New Breed will have to demolish the old house and commence building.

He presents you with a draft Agreement for Sale (Document I) prepared by the Vendor's attorney-at-law.

- (i) Outline generally the steps to be taken and the requisitions to be made by you prior to your client's execution of the contract.
  - (ii) Advise New Breed generally and outline any proposed changes to the Agreement for Sale (Document I) necessary to protect New Breed's interest.
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## TITLE AND COSTS.

OF TRANSFER: Registered Title. Stamp Duty, Registration Fee and Transfer Tax to be borne equally by the Vendor and Purchaser. Each party shall bear his own Attorney-at-law's fee.

## INCUMBRANCES, RESERVATIONS,

RESTRICTIONS & EASEMENTS: Free from incumbrances other than the restrictive covenants and easements (if any) endorsed on the Certificate of Title and such easements as are obvious and apparent.

## SPECIAL CONDITIONS:

(1) The Attorney's Fee for preparing this Agreement for Sale fixed at the sum of \$15000 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.

(2) It is understood that the Purchaser shall apply to the Entertainment Development Bank Ltd. or such other lending institution as may be approved by the Vendor for a loan of not less than \$1,000,000 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 within 45 days of the date hereof 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. In the event of the Agreement being rescinded all moneys paid hereunder by the purchaser shall be refunded without interest and free from deductions SAVE AND EXCEPT that the Purchaser hereby agrees to pay to the Vendor's attorney-at-law fees in the sum of \$20,000.00 for professional services rendered in respect of work incidental hereto and the Purchaser hereby irrevocably authorizes the Vendor to deduct the amount of such fee from deposits paid to the Vendor and pay same to the Vendor's attorney-at-law on termination of this agreement