

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2008

CONVEYANCING AND REGISTRATION OF TITLE

(TUESDAY, MAY 20, 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

You have been instructed by Allan Bignott, the majority shareholder and the chairman of the board of directors of A.B. Company Ltd. (the “Company”) a company incorporated under the Companies Act of your jurisdiction. The Company has entered into an agreement with Peter and Sally Nocash for the sale of a one half acre lot, which forms part of a larger property. You are the attorney-at-law having the carriage of sale.

The agreed terms of payment are that an initial payment equivalent to 25% of the purchase price is to be made on the signing of the agreement, with the balance to be paid on completion. Contracts have been exchanged and receipt of the initial payment has been acknowledged.

Special condition No.5 of the agreement states that the sale is subject to the vendor receiving “...**all approvals as may be required from the relevant authorities concerned with the subdivision of the property and separate title to the lot which is the subject matter of the agreement.**”

May 21, 2008 is the agreed completion date.

You have just received the following letter from Mr Peter O’Dare of the law firm O’Dare and Associates, attorney-at-law for the purchasers:

“...May 20, 2008

Dear Sirs:

Re: Sale of Lot No.5 Merry Hill to Sally and Peter Nocash

It is with regret that I must advise that as a result of a recent unexpected change in their financial circumstances, my clients Sally and Peter Nocash are unable to provide the balance of the purchase price on or before the agreed completion date of May 21, 2008.

Mr and Mrs Nocash are now in the process of negotiating a loan. However, as a gesture of their commitment to the sale, I am enclosing a cheque representing a further payment of 5% of the purchase price.

The situation leaves my client with no other choice than to respectfully request an extension of six (6) months within which to pay the balance and complete the sale...”

Allan Bignott confirms that there was never any indication in his negotiations with the purchasers that they would require a mortgage to complete the sale. In fact, he says that the purchasers were quite enthusiastic and had offered to make a cash payment.

Allan Bignott further tells you that since he has already received provisional subdivision approval he is ready to close the sale. In any event he finds that the request for a six (6) month extension on the closing date is an unreasonable request and is prepared to give no more than a two (2) month extension.

Prepare your written advice to Allan Bignott on the steps you would recommend that he should take in responding to the request of the purchasers. You should include in your advice reference to any document(s) you consider appropriate, summarizing their contents.

QUESTION 2

Marianna has been asked by her family to take the necessary steps to sort out the estate of her late grandparents, Jeremiah and Sarah Patrick, both of whom died more than 20 years ago. The estate includes one acre of land. Several family members have occupied different sections of the land over many years.

Marianna tells you that as a first step she would like to get registered title for the property and seeks your assistance.

In a letter to Marianna outline:

- (i) the instructions you would require and the matters to be taken into account in order to proceed with the application to obtain registered title to the land; and
 - (ii) the procedural steps to be taken to obtain registered title. You are to include in your outline reference to any document(s) that may be required summarizing their contents.
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QUESTION 3

Jill Abel tells you that in 2003 she started a food catering business with two other partners, Jack and Joe. She also tells you that for ten years, she lived with Jack in a common law relationship, which came to an abrupt end about three months ago.

Jill says that in 2005 the three partners agreed to purchase a property from which the food catering business has been conducted. Title to the property is registered in the names of Jack and Joe as joint tenants of the fee simple interest. Jill explains that for strategic reasons her name was not registered on title at the time.

Jill shows you a letter jointly signed by Jack and Joe that she says was handed to her at the end of the work day, yesterday. The letter states *inter alia* that her services were no longer required as the business was being restructured. A cheque was enclosed, representing redundancy payment due to Jill, and thanking her for her service to the business.

Jill is very distraught and fears that her interest in the property is in jeopardy, especially because her name is not on the title.

- (i) Prepare your written advice to Jill outlining the procedural steps she should take to protect any interest she is claiming in the property prior to taking court proceedings. Your advice must include any document(s) that may be required summarizing their contents.
- (ii) What are the options open to Jack and Joe in response to any step that Jill may take pursuant to your advice at (i) above.

QUESTION 4

Ella and her deceased brother Patrick are registered as tenants in common of the fee simple interest of property known as 22 Mark Ave., St. Joseph. Ella is the sole executrix of Patrick's estate and probate has already been granted.

Ella now seeks your advice as to what steps she must take to give effect to Patrick's Will in which Patrick devised all of his real property to Ella.

Advise Ella, indicating any document(s) she will require, summarizing their contents.

QUESTION 5

Daniel is the sole executor and trustee of the estate of his brother Henzel. The Will provides, *inter alia*, as follows:

"...I devise to my son Winslow my house located at 19 Inheritance Ave., for his use and enjoyment and on his death to my wonderful granddaughters Grace and Emily."

Daniel tells you that Winslow is anxious to have Henzel's estate fully administered because he wants to sell the house to help pay for a luxury yacht he is buying. In fact, Winslow has already taken the brother of his current fiancé, Stanford, to look at the house with the possibility of buying it.

Daniel further tells you that Henzel specifically arranged his affairs in the way he did precisely because he was aware of Winslow's spendthrift tendencies and was concerned about the future of his granddaughters.

Prepare your written advice to Daniel outlining:

- (i) the procedural steps Winslow must follow to sell his interest in the house and how the proceeds of sale will be dealt with; and
- (ii) Daniel's role in the sale as executor and trustee under the Will.

QUESTION 6

Pauline and Jonathon Lucas reside at 19 Daffodil Rd., title to which is registered in their names as joint tenants of the fee simple interest. The property consists of a three bedroom dwelling house on a half acre lot with the following restrictions on title:

“...1. The said land shall not be subdivided.

2. No building other than a private dwelling house with appropriate outbuildings shall be erected on the said land and no trade or business whatsoever shall be carried on upon the said land or any part thereof.”

Pauline and Jonathon want to build a block of apartments for rent on part of the land as a part of their retirement plan. They are now negotiating a mortgage with Money Bank Ltd. and tell you that the bank is concerned that building the apartments will be in breach of the restrictions on title.

Jonathon says that several buildings on Daffodil Rd. are either townhouses or apartment complexes and this has been the case for as long as he could remember, having lived there for more than twenty years. Jonathon also says that in any event the area is central and very attractive to persons who live and work in and around the capital town, which is only ten miles away.

Pauline and Jonathon are anxious to start the project and must get the bank's financing to do so.

- (i) Advise Jonathon and Pauline on the procedural steps they must take to address the bank's concerns about the restrictions on title. You are to

include in your advice any document(s) required and summarizing their contents.

- (ii) Briefly explain the basis for your advice.
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QUESTION 7

Allea is indebted to Mortgage Bank Limited in the sum of \$4,500,000, given on the security of her residence located at 20 Upscale Heights. The property consists of a four bedroom house on a one acre lot. Allea is a very proud homeowner and has invested much in maintaining and landscaping the property. In fact the grounds have been used many times for high profile social events.

Allea tells you that having had a very difficult year, both personally and professionally, she is six months in arrears of her mortgage payments, totaling \$1,500,000. She relates that over the period of default she has had discussions with the loans officer at Mortgage Bank Limited emphasizing her willingness to pay but asking for just a little more time.

Allea further tells you that she has just received a letter from the bank stating that in the exercise of its power of sale, the property has been sold by private treaty for \$2,500,000 to a Michael Barnaby of Happy Town. She has learnt that Michael is a property developer and personal friend of the loans officer. Allea also shows you the following advertisement which was published two weeks ago in the "ALL NEWS" a weekly newspaper, purporting to advertise her house for sale:

“Public auction to be held at No. 1 Property Place, St. John on Wednesday May 10, 2008 at 9:30 am. Large dwelling house in the Upscale Heights area with registered title under mortgagee’s power of sale.”

Allea is baffled as to how this could happen to her and now seeks your advice.

In a letter to her, advise Allea whether Mortgage Bank Limited has properly exercised its power of sale, outlining the basis for your advice and any recourse she may have in the circumstances.

QUESTION 8

You are instructed by Jenita Rainford who is seeking to purchase a strata/condominium property in a new development. Your instructions are that Jenita will require a mortgage representing 75% of the purchase price to complete the sale. She is also uncertain whether she wants her 16 year old daughter Shara to be registered on title with her and if so the type of interest she wants Shara to have.

Jenita says that she has been told by the real estate agent for the developer that some of the strata/condominium units may be sold with appliances. However, the developer has not yet decided which units will have appliances because he is having a problem sourcing the appliances he wants.

Jenita would also like to move out of her rented apartment and into her new home as soon as an agreement is signed.

- (i) As attorney-at-law for Jenita advise her generally on her proposed purchase of the strata/condominium unit, including any specific terms you would recommend that she insists that the vendor include in the agreement for sale.

 - (ii) What preliminary inquiries, searches and requisitions would you deem appropriate in Jenita's case?
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