

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2009

CONVEYANCING AND REGISTRATION OF TITLE

(TUESDAY, MAY 26, 2009)

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

Janice has been operating a small catering business from her house located at 10 Willow Drive for the past 3 years. The business has over time outgrown Janice's home kitchen base. Janice is considering expanding the business to build a commercial kitchen at the back of the property.

The property consists of a three bedroom house on a quarter acre lot, title to which is registered in Janice's name as sole proprietor of the fee simple interest.

The Willow Drive area has gradually developed into a mix of commercial and residential properties. However, the following restriction appears on each of the titles:

"No building other than a private dwelling house with appropriate outbuildings thereto shall be erected on the said land and no building erected on the said land shall be used for the purpose of a shop and no trade or business whatsoever shall be carried on upon the said land or any part thereof.

The aforementioned restriction shall run with the land"

Janice, who was raised by her grandparents, actually grew up on this very property with them. They were themselves well accomplished caterers operating a similar business on the property for over 25 years, until they retired about three years ago and passed the business over to Janice.

The neighbours have always supported Janice's grandparents in the business by using their catering services from time to time. Janice has largely gained the support of her neighbours since she took responsibility for the business. However, over the past six

months her relationship with the occupants of the adjoining property, Janye and Richard Weston has been strained. The Westons have complained of a noticeable increase in the rodent population in the area and have hinted strongly that they suspect the catering business as a source of the problem.

The Westons are relatives of the registered proprietor, Maizie Bayne and have her permission to stay at the house until construction of a house the couple is building elsewhere is completed.

Maizie, the best friend of Janice's grandmother, now lives with one of her daughters in another parish/district due to her deteriorating health.

Janice is negotiating a bank loan to assist with the construction of the commercial kitchen. She tells you that the loans officer has indicated that her application would likely be given more favourable consideration without the restriction on the title.

- (i) Advise Janice on the procedural steps she would be able to take to improve her chances of getting the loan in light of her loans officer's indication. Give reasons for your advice.
 - (ii) Based on your advice in (i) outline the document(s) required, summarizing their contents.
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QUESTION 2

Gillian and her business partner, Pedro, have for the past fifteen years run a very successful travel agency. The business is located in the hub of the business district of Royal Town in a building owned by Gillian and Pedro as tenants-in-common in equal shares.

In 2006, Gillian and Pedro obtained a loan of \$6 million from the Royal Town Building Society to assist with expansion of the business. The loan was secured by a mortgage over the business premises.

Over the past year, business has slowed significantly as a result of the general downturn in the economy and increased fuel prices, which have negatively impacted the travel industry.

Gillian and Pedro admit that, as a result of the difficulties they have been experiencing, they have not made the monthly payments due to the Building Society for four consecutive months. They are however very optimistic that business will improve over the summer as generally persons tend to travel a lot during that time.

Gillian and Pedro tell you that they are angry and embarrassed, because the property was included in a list of properties published in the local newspaper, about three weeks ago, advertising a public auction sale by the Building Society acting under its power of sale. They have said that they were never told by the Building Society that the property was going to be sold. In any event they believe that the interest rate of 20% on the loan is onerous and that they were pressured to accept the terms at the time.

They further tell you that, having seen the advertisement, they immediately sought an appointment with the Building Society's Loan Manager, Carlos Blanco, without success.

They thereafter forwarded to him, in writing, a proposal that would allow them to make a reduced monthly payment towards the loan for a few months. They have just received a response rejecting the proposal on the ground that the Building Society has already agreed in principle to sell the property to Travel World Ltd. by private treaty. The agreement for sale is being prepared for execution.

In preparation for a meeting with Gillian and Pedro prepare the following -

- (i) a checklist of the specific matters to be taken into account in order to determine whether the bank has acted properly in attempting to exercise its power of sale;
- (ii) an outline of the procedural steps that they can take to challenge the bank's exercise of its power of sale, giving reasons; and
- (iii) an indication of the remedies that may be available to them should they accept your advice in (ii) above.

QUESTION 3

Cupid and Valentine met, quite by accident, in a supermarket aisle two years ago, when Valentine dropped a bottle of strawberry syrup which spilled all over Cupid's starched white trousers and matching sneakers. Valentine immediately apologised and held out the olive branch by inviting Cupid to dinner that same evening.

One week later Cupid and Valentine got married in a beautiful all white ceremony and Valentine moved in with Cupid in a lovely two-bedroom cottage in a new 'Happy Villas'

development. Title to the property is registered in Cupid's name as the sole proprietor of the fee simple interest.

Valentine is devastated as Cupid died of a heart attack one month ago. She is anxious to migrate and change her environment so that she can create a new life. She shows you Cupid's Will that states *inter alia* -

"I devise to the love of my life Valentine all of my interest in "Happy Villa" where we started our dream life together which interest she shall hold for the rest of her life provided she does not remarry and on her death to my son Mercury."

Valentine tells you that she would like to make a clean break from the property but is concerned that she may not be able to benefit financially from it, given the terms of the Will.

Valentine is asking that you advise her on the following -

- (i) the option(s) open to her for giving up her interest in 'Happy Villa' and getting cash in exchange; and
- (ii) the matters that she must consider and any associated procedural steps she would be required to follow given your advice in (i) above.

QUESTION 4

Johnathon and David have agreed in principle that David will purchase from Johnathon the fee simple interest in a three bedroom apartment, which is now under construction in a new development. David was introduced to the property by his friend Regina Rich, a licensed/registered real estate agent, who also happens to work with Johnathon as the real estate agent for the development.

The purchase price is \$15,000,000 and Johnathon is asking that fifty percent be paid in two instalments prior to completion of the sale. David tells you that although he has been saving very hard over the years to put a roof over his head, he will require a mortgage loan to cover at least seventy-five percent of the purchase price. He is also considering putting his mother's name on the title but is not sure about the implications of doing so.

David has made an appointment to meet with you to discuss his plans and to determine how he should proceed.

In preparation for the interview you are asked to make a checklist, with brief explanatory notes, on the following matters -

- (i) the preliminary inquiries and searches that he should make in contemplating the purchase of the apartment;
- (ii) the matters he should be aware of and insist on being included in a valid and enforceable agreement for the sale and purchase of the apartment; and
- (iii) the implications of joint ownership with his mother.

QUESTION 5

Roxianna is registered as the sole proprietor of the fee simple interest in property registered at Block/Volume 25 Parcel/Folio 75 of the Register Book/Land Register. The property consists of a well appointed four bedroom bungalow on a quarter acre lot of land.

Roxianna tells you that she inherited the property from her grandfather, which was at that time an unimproved lot. She had started to build the house when she married Zachary and he had moved in with her when construction was completed.

The marriage is now in shambles and Zachary has moved out of the house and has filed for a divorce.

Roxianna has just received a notice from the Registrar of Titles/Lands stating that Zachary has lodged a caveat/caution against all dealings on title, on the basis that he owns a half share in the property.

Roxianna is outraged and wants to know the effect of Zachary's action and what can be done to assist her because she is determined that he will not get any part of her grandfather's hard earned property.

Prepare a letter to Roxianna advising her on the following -

- (i) the practical implications of the caveat/caution lodged against all dealings; and
- (ii) the procedural steps that she can take to deal with the matter, having received notice from the Registrar of Titles/Lands.

QUESTION 6

Benjamin has entered into an agreement to sell to Solomon his fee simple interest in a warehouse. The property is registered at Block/Volume 110 Parcel/Folio 15 of the Register Book/Land Register in the names of Benjamin and his deceased brother, Jacob, as joint tenants.

Contracts have been exchanged and completion is to be within 90 days of signing the agreement. The stamped agreement is dated February 22, 2009.

Clause 4 of the Special Conditions of the agreement states that Benjamin is to note the death of Jacob prior to completion. The application to note Jacob's death was submitted to the Registrar of Titles/Lands on April 27, 2009. When inquiries were last made, the advice from a very credible source indicated that the approval of the application had been granted in principle and full processing would be complete by today's date.

Solomon, through his attorney-at-law, John Lawya of the firm Lawya and Associates, has written to ask for a one month extension of time within which Solomon is to pay over the balance of the purchase price in exchange for title. Benjamin is insisting that he will not agree to any such extension of time, because he has seen Solomon living the high life over the past few months.

Benjamin is requesting that you immediately reply to John Lawya indicating in no uncertain terms that he will agree only to a two-week extension of the completion date.

- (i) Advise Benjamin of the circumstances in which you can comply with his instructions; and

- (ii) prepare an appropriate response to John Lawya based on your advice in (i).
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QUESTION 7

Real Foods Limited is a private company incorporated under the Companies Act of your jurisdiction. The company conducts business as wholesale distributors of processed foods from its warehouse located at 12 Healthy Lane in the parish/district. Title to the property is registered in the name of Real Foods Limited at Block/Volume 125 Parcel/Folio 100 of the Register Book/Land Register.

On March 10, 2009, thieves broke into the warehouse taking with them a large quantity of processed foods and a safe which was normally kept in the office of the managing director, Alex Foodal. Alex and his father, Alexander Foodal are the sole directors and shareholders of Real Foods Limited.

Alex's instructions are that all of the company's official documents were kept in the safe, including the Duplicate Certificate of Title/Land Certificate for the property. He further tells you that when it was discovered that the building had been broken into and the safe and the goods found missing he had called in the police the same day. The police have started an investigation but to date have not come up with the persons responsible or the items missing. He also says that, together with his employees, he had conducted a thorough search of the areas in the vicinity of the warehouse and they found no trace of any of the items missing.

Advise Alex on the following -

- (i) the practical implications of not having the duplicate certificate of title/land certificate; and
 - (ii) the procedural steps Alex would be required to take if he wants to obtain another duplicate/land certificate, including the document(s) required and their contents.
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QUESTION 8

Janai, Sophia and their deceased brother Ephraim are registered as tenants-in-common of property located at 45 Hisbicus Avenue in the parish/district. Janai and Sophia are Executors named in Ephraim's Will, which has already been probated. Ephraim has devised his interest in the property to his two children Alea and Stephanie to hold as joint tenants.

Advise Janai and Sophia on the procedural steps they would be required to take to pass the interest in the property to Alea and Stephanie in accordance with the Will. You are to include in your advice any document(s) required and their contents.
