

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2011

CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 20, 2011)

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

The Hopeful Town Residents Association has sought the assistance of the firm with which you work, to advise on available options for regularising the status of persons occupying lands for residential purposes in the community. Many of the residents live on unregistered land, which they have occupied for many years, without clear title to the land.

The Association has organised a meeting of the residents to discuss with them the benefits of obtaining registered title to land, where possible.

You have been asked, on behalf of the firm, to make a presentation at the meeting on the following:

- (i) The available options that may be open to residents for obtaining registered titles to land that they have occupied for many years; and
- (ii) The procedural steps that the residents, who claim that they own the fee simple interest in the land they occupy, would be required to follow to obtain registered title.

Set out the salient points that you will use to guide your presentation to the meeting.

QUESTION 2

Leeza Roma resides at 211 Plumbago Drive in the parish. There are two buildings on the land, one of which is being used by Leeza as a grocery shop and the other is a two-bedroom bungalow in which she lives with her brother Ashton.

The title documents to the property show that Ashton is the proprietor of the fee simple interest and that there is a restriction on title, which prohibits the erecting of any

building for use as a shop. There is a further restriction that "... no trade or business whatsoever shall be carried on, on the said land."

Leeza also tells you that, from her own investigation, the titles to all of the properties on Plumbago Drive have the same restrictions.

Leeza started the grocery shop business over twenty years ago and now wishes to expand what has turned out to be a very successful business venture. With encouragement from many of her customers, who are residents of the Plumbago Drive community and its environs, Leeza says she prepared a business plan for the expansion of the retail business to a retail and wholesale grocery.

Leeza is now negotiating a mortgage with Entrepreneurs Development Bank and Ashton has agreed to join her in the loan and to use the Plumbago Drive property as security. However, Leeza has told you that the bank has expressed its reservations about giving the mortgage because the bank's attorney-at-law has advised that the operation of the grocery shop is in breach of the restriction on title and that the expansion of the business will only serve to aggravate the breach.

Further, Marie Claire Newell, who lives in the house on the adjoining property, has told Leeza's best friend, Elsa, that she has never and will never patronize Leeza's business because she finds it incredible that anyone could even think of setting up a shop in the middle of a community as affluent as Plumbago Drive. Marie Claire has occupied the house as a tenant for the past three years.

Leeza would like to expand but could only do so with the assistance of the bank. In addition she is somewhat concerned about Marie Claire's lack of support especially because she fears she may be accused of breaking the law.

Advise Leeza on the procedural steps to be taken to address the bank's concerns about the breach of the restrictions on title. You are to include in your advice a clear indication as to what, if any, documents will be required and the information needed to complete them.

QUESTION 3

Perry Lee, an engineer, who is the registered proprietor of a property located at 50 Merry Way, recently married Jenna. Perry wants to add Jenna's name to the title as a joint tenant of the fee simple interest. The property is mortgaged to Island Building Society and the Duplicate Certificate of Title/Land Certificate is being held by the building society.

Perry wants to know the procedural steps he would be required to take to add Jenna to the title as a joint tenant.

Prepare a letter to Perry outlining the procedural steps to be taken to add Jenna to the title as joint tenant. Your advice must include reference to any document(s) that will be required and the information to complete the document(s).

QUESTION 4

Melanie Bright has entered into an agreement with George Grandiss to sell all of her fee simple interest in her condominium/strata unit.

Melanie tells you that she is extremely worried that she will not be able to complete the sale because she cannot find the Duplicate Certificate/Land Certificate. She remembers

seeing the document three months ago, around the time that she was negotiating the sale with George. She recalls putting the certificate in a safe in her study, but about a month ago, there was a burglary at her home, and the safe was stolen by the burglars. The police have not been able to make a breakthrough in the case and, to date, the whereabouts of the safe remain a mystery.

Advise Melanie on the procedural steps she would be required to take to complete the sale, if possible, without the certificate. Your advice must make reference to any document(s) required and the information required to complete the document(s).

QUESTION 5

On May 25, 2010, Marco Paulo Ltd. lodged a caveat/caution against all dealings in respect of property registered at Volume/Block 10 Folio/Parcel 45 of the Register Book/Land Register.

In exercising its power of sale pursuant to a mortgage, Federal Building Society sold the property to Jason Ryan. A duly executed instrument of transfer was presented, accepted and registered at the Office of the Registrar of Titles/Registrar of Lands on April 5, 2011.

Marco Paulo Ltd. has now learnt that the property was transferred. The company has written to the Federal Building Society and the Registrar seeking an explanation.

Federal Building Society has replied stating that its searches did not reveal the existence of a caveat/caution on title.

The Registrar has replied stating that, having accepted the caveat/caution, there is no further obligation on the Office of the Registrar and that Office is therefore accepting no responsibility in the matter.

The Chairman of the Board of Directors of Marco Paulo Ltd., Mr Grantley Burns, is considering taking legal action and has asked that you advise the Board on the procedural steps that should have been followed by the Registrar and the building society, after the caveat/caution had been accepted by the Office of the Registrar.

Advise Marco Paulo Ltd as requested. Your advice must make reference to any documents you deem necessary and the information required for completing them.

QUESTION 6

In late December 2010, Deon, in a cell phone conversation with Joanne, agreed to buy three acres of unimproved land from Joanne's elderly father. Joanne has an irrevocable power of attorney to deal with all matters relating to her father's real estate.

Deon confirmed the arrangement in an e-mail to Joanne dated January 2, 2011, the details of which indicate that Deon had sent to Joanne a certified bank cheque for \$150,000, by bearer, on the same date. The e-mail further states that the payment is an indication that he is serious about the agreement and represents a down payment on the purchase price. Deon also indicated that he will pay the balance to Joanne as soon as Joanne indicates that she is ready to complete the sale.

Joanne acknowledged receipt of the cheque by e-mail dated January 4, 2011 and thereafter personally delivered to Deon a receipt for the money paid. Since February 2011, Deon has cleared the land and has erected a perimeter wall around the property.

Joanne tells you that she telephoned Deon yesterday to let him know that she is ready to complete the sale. It was only then that Deon indicated that he is facing serious money problems because he has had to be paying the medical bills for a family member. Deon requested an extension of time for six months to complete the sale.

An irate Joanne has asked that you write to Deon indicating that she will call off the sale and hold on to the down payment if she does not receive the balance of the purchase price within a week. She is particularly upset because her best friend Caval has told her that Deon recently posted the picture of his brand new red BMW convertible on his Facebook page.

Prepare a letter in response to Joanne's request advising her as to whether you can accede to her request in the circumstances, giving reasons. Your letter should outline the steps you would recommend that she take in the circumstances.

QUESTION 7

Margie Rainford is contemplating the purchase of a strata/condominium property in a new development and has asked for your advice as she is now negotiating the terms of the agreement for sale with the vendor.

Margie tells you that she will require a mortgage representing 75% of the purchase price to complete the sale. She is also considering registering her children Sammy and Ellen, ages 19 and 14 respectively, on title with her.

Margie would also like to move out of her rented apartment and into her new home as soon as the agreement is signed. She is hoping that she can avoid having to pay rent for the period after entering into the agreement and completion of the transaction. She

would like to use the rent money saved, towards purchasing furnishings she may need. Margie says the vendor has indicated that some of the units in the development may be sold with appliances. However, she is unclear on the likely implications of purchasing a unit with or without appliances.

Advise Margie on:

- (i) The preliminary inquiries and searches you would deem appropriate.
- (ii) The likely terms of sale/purchase of the strata/condominium unit, including any specific terms you would advise that she negotiate with the vendor for inclusion in the agreement.
- (iii) The type of interest that the children should hold with her and any likely implications.

QUESTION 8

Rory is indebted to Money Bank Limited in the sum of \$5,000,000, loaned to him on the security of a commercial property, title to which is registered in the names of Rory and his wife Eliza as the proprietors of the fee simple interest. Rory has invested much in the maintenance and upkeep of the property and recently won the Commercial Building of the Year Award for the most aesthetically pleasing and environmentally friendly building in the town.

However, Rory has experienced a very difficult year in business and is now six months in arrears of his mortgage payments, totaling \$600,000 plus interest and late payment fees. Rory tells you that he has been in constant contact with the loans officer making it absolutely clear that he is willing to pay but needs a little more time.

Rory shows you a letter he received from the bank stating that in the exercise of its power of sale, the property has been sold by private treaty to Jermaine Murell. Rory says that he has learnt that Jermaine is a personal friend of the loans officer.

Rory also shows you an advertisement published in "The Village News", the local daily newspaper, advertising the property for sale by public auction, which was to be held the following week.

Rory is distraught and now seeks your advice as to whether there is anything that can be done to assist him.

Advise Rory as to any recourse he may have in the circumstances, outlining the basis for your advice.
