

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, JULY 2020**

CONVEYANCING AND REGISTRATION OF TITLE

THURSDAY, JULY 9, 2020

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering the question, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (i) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (j) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year II JULY 2020 EXAMINATIONS, CONVEYANCING AND REGISTRATION OF TITLE DROP BOX** on TWEN

by **Friday, July 10, 2020**, NOT LATER THAN 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

(k) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:

- Go to ***www.lawschool.westlaw.com***.
- Log in using your username and password credentials and select the **TWEN** button.
- Click on the link for “**Assignments and Quizzes**” located on the left-hand side of the navigation screen.
- Select the relevant examination and the examination drop box as follows:
 - Year II students with Examination ID numbers between 2100-2162 must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box A Year II - 2100-2162**”.
 - Year II students with Examination ID numbers between 2163-2232 must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year II - 2163-2232**”.
 - Year II students with Examination ID numbers between 2235-2311 must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year II - 2235-2311**”.

You are an associate with the law firm of Fitzwilliam, Perkins & Smith. Mr Selby Woodhouse is a long-standing client of the firm.

Mr Woodhouse comes to see you and instructs you in relation to several matters concerning property at Mansfield Park:

Title to the property is registered in the names of Mr Woodhouse and his deceased wife, Dora, as joint tenants. The property comprises a half-acre parcel of land which is part of an old upper-middle income residential subdivision known as “Mansfield Park”, developed in the early 1960s. The subdivision comprises approximately 40 similarly sized lots and the following restrictions appear on the certificates of title/land certificates for all the lots in the subdivision:

- a. *The said land shall not be subdivided.*
- b. *No building other than a private dwelling house shall be erected on the said land.*

Several of the properties in the neighbourhood have, over the years, been converted into townhouses or apartments.

Mr Woodhouse tells you that late last year he had entered into a joint venture arrangement with George Rochford, a large real estate developer in the jurisdiction, to construct an upscale townhouse complex comprising 35 two-bedroom townhouses with the usual amenities. The parties had gone as far as engaging architects for the project, and organising a public meeting for residents in the neighbourhood to reassure them that the exclusive nature of the project would ensure that the general look and character of their neighbourhood would remain unaffected, and in fact, was very likely to result in their properties appreciating in value.

Unfortunately, he (Mr Woodhouse) has had to withdraw from the joint venture as the downturn in the economy due to the COVID-19 pandemic has affected his cash flow position, and he has found himself unable to fund the project to the extent to which he had committed. Mr Rochford has agreed to release Mr Woodhouse from his obligations under the joint venture, provided that he sells the property to him (Mr Rochford), and, the restrictions on the title are varied or removed so as to facilitate the proposed development. Mr Woodhouse has agreed to these terms.

Mr Woodhouse provides you with the following details:

1. The Certificate of Title /Land Certificate for the property is registered at Volume /Block 482 Folio/Parcel 166 of the Register Book of Titles /Land Register.
2. There is a 30-foot container on the property which had been converted for use as offices which, up to recently, were being used by him. A number of items of office furniture and equipment are still presently in the container.
3. Mr Rochford is willing to purchase the property "AS IS" including the items of furniture and equipment that are presently on the property.
4. The purchase price is \$35,000,000 and an initial payment of \$4,250,000 is required from Mr Rochford on the signing by him of the agreement for sale. The balance is to be paid on completion.
5. Mr Rochford will need mortgage financing to complete the sale.
6. Mr Rochford wants to take possession on the exchange of contracts, as there is some preparatory work relating to the project that needs to be done by his surveyor and engineer.
7. Completion is to take place within four months of the execution of the sale agreement. He does not intend to entertain any delays, as he urgently needs the proceeds of sale to settle the outstanding balance owing under a mortgage that is registered on the title for the land.
8. The mortgage registered on the title relates to a loan of \$18,000,000 advanced to him by Island Bank Limited. He has not made the monthly payments due to the Bank for five consecutive months because of the financial difficulties he has been

experiencing. Over the period of this default, he has had discussions with the bank manager, emphasising his willingness to pay, and has been asking for a little more time. Mr Woodhouse says that about four weeks ago, he was shocked to see that the property was included in a list of properties published in a local newspaper advertising a public auction sale by the bank, acting under its power of sale. The advertisement read as follows:

“Vacant Lot for sale pursuant to Powers of Sale contained in a Mortgage. Property registered at Volume/Block 482 Folio/Parcel 166. Public Auction to be held at No.23 Belmont Road, on Thursday, July 20, 2020.”

The Bank never notified him that the property was going to be sold. On seeing the advertisement, he immediately wrote and hand-delivered a letter to the bank manager, proposing that the monthly mortgage payment be reduced for a few months. The bank has recently replied to him, rejecting the proposal on the ground that it has already agreed to sell the property to Randall Russell by private treaty for \$10,000,000 and that the sale agreement is being prepared by the bank’s attorneys-at-law for execution by the parties.

Mr Woodhouse is quite concerned that the property is being sold for the exact amount in terms of principal and interest that is outstanding under the mortgage as at June 30, 2020. He has also heard that Randall Russell and the bank manager are the shareholders and directors of a company, Exclusive Homes Limited, which is involved in real estate development.

9. A recent search conducted at the Office of the Registrar of Titles/Lands revealed that there is a caveat/caution registered against the title to the property. A perusal of the caveat/caution shows that it was lodged more than ten years ago, by a Norris Gill, alleging that he had an interest in the land, as he had paid a deposit to Mr. Woodhouse, which was never returned, although the proposed sale was never completed.

Mr Woodhouse further tells you that:

- (a) He has heard that Mr Rochford’s mortgage negotiations are likely to be protracted and may not facilitate a four-month completion date.
- (b) He is very upset as in the negotiations leading up to the sale, Mr Rochford had made it clear to him that he had qualified for a mortgage and had met all of the eligibility requirements.
- (c) It is very likely that Mr Rochford may request a one-month extension within which to pay the balance of the purchase money in exchange for title.
- (d) Extending the completion date by one-month would be financially inconvenient for him, but he is willing to consider a two-week extension, provided that if Mr Rochford fails to pay the balance by the extended date,

he wants to be able to find another purchaser for the property and hold onto the initial payment made by Mr. Rochford.

- A.** Prepare a letter to Mr. Woodhouse outlining your advice on the following:
- (a) (i) the general terms and conditions you would insert in the agreement for sale;
 - (ii) the special terms/conditions you would recommend be included in the agreement for sale, outlining their contents and the reasons for including them;
 - (iii) the further instructions, if any, you will need to assist in your preparation of the agreement for sale;
- (b) the options, if any, available to Mr Woodhouse for dealing with the caveat/caution, explaining the procedural steps involved;
- (c) the procedural steps he would be required to take to vary/remove the restrictions on the title in light of the development plans for the property and the likelihood of success. Your advice must also indicate document(s) required, and the contents of such document(s);
- (d) (i) the specific matters to be taken into account to determine whether the bank has acted properly in attempting to exercise its power of sale; and
- (ii) any legal recourse Mr. Woodhouse may, in the circumstances, have against the bank; and
- (e) the circumstances in which you can comply with his instructions in relation to the request for an extension, giving reasons and identifying any documents document(s) that you consider necessary based on your advice.
- B.** Prepare the document(s) identified by you in **A** (e) above.

Note:

Your letter must address the various issues in the order set out from (a) to (e) above.

Your letter should not exceed **3500 WORDS**.

END OF PAPER