

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL  
LEGAL EDUCATION CERTIFICATE  
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2001

CONVEYANCING AND REGISTRATION OF TITLE

(WEDNESDAY, AUGUST 8, 2001)

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 question you attempt.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

**QUESTION 1**

Paulette owned a sizeable vacant lot on the plains of St. Joseph. She had obtained planning permission and subdivision approval to divide the land into 10 lots for houses and apartments.

In 1993 Paulette borrowed \$250,000 from Skylimit Building Society and secured a first legal mortgage on the land.

In 1999 Paulette borrowed a further \$1,600,000 from Priceright Finance Ltd. secured by a second legal mortgage on the land.

She fell into arrears with her payments to Priceright Finance Ltd. and in April 2000, having complied with all the legal formalities, Priceright Finance Ltd. sold the land by auction to Bell Designs. The advertisement mentioned that there was planning permission for the apartments but it did not mention the planning permission or the subdivision approval for the houses. Because of the omission, Bell Designs paid far less for the land than the price it should have fetched.

- (a) Does Paulette have any remedies against:
- (i) Priceright Finance Ltd.;
  - (ii) Bell Designs?
- (b) How must Priceright Finance Ltd. apply the proceeds of sale of the land?
- (c) If Bell Designs decides to further subdivide one of the lots, what would be the steps and procedures necessary to the process of the application?
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**QUESTION 2****LAWYA & LAWYA, ATTORNEYS-AT-LAW****INTERNAL MEMO**

**TO : Junior Lawya**  
**FROM : Senior Lawya**  
**DATE : July 2, 2001**  
**SUBJECT : CHEDDAR BUILDING SOCIETY AND THEIR SALE OF  
58 CHEESE LANE, MIDLANDS**

We act for the building society who are selling under their powers of sale. Contracts were exchanged a month ago and completion was due yesterday. As you well know the society are important clients of ours and we must do our utmost to protect their interests at all times. Unfortunately, the buyer has failed to complete. I rang the other side's attorney-at-law who told me that they were not in funds and were having difficulty getting instructions from their clients who suddenly have become somewhat elusive. The sale price is \$4,500,000. We have stamped the agreement out of the initial payment of \$700,000 paid to us as stakeholders.

Jemima Puddleduck, the manager of the building society, has been on the telephone to me this morning saying she has another buyer interested who can proceed to exchange immediately, albeit at a lower price of \$4,000,000. She believes that the offer is genuine and that the sale could be concluded very swiftly.

How should we advise the clients in light of these circumstances?

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**QUESTION 3**

You are a junior in a firm of attorneys-at-law. It has been decided that additional documentation is required for the guidance of the attorneys-at-law in the conveyancing department. To that end, you are required to prepare pre-completion and completion checklists for the guidance of the practitioner for use when acting for sellers and also for buyers. You will need to cover all pre-completion and completion matters, including those required in connection with mortgages. You will be covering aspects of the conveyancing process from exchange right through to the physical completion of the transaction.

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**QUESTION 4**

James who died earlier this year, appointed Tick and Tack as trustees of his Will and left land with registered title for his wife Maxine for life and then to his children John and Jane absolutely. His Will provided that the land should not be sold without the consent of John and Jane. Probate of the Will was granted to the executors and the property duly vested in the beneficiaries.

Cynthia, who has always liked the house, made an offer of \$5,000,000 for it to Maxine, which was in excess of its likely market value. She knew that Jane did not want to sell the house but did not know of the restriction in James' Will. Maxine has accepted Cynthia's offer and the parties have exchanged contracts for the sale of the premises. Maxine has not given notice to Tick or Tack and the contract stipulates plainly for the payment of the purchase price to the Vendor's attorney-at-law.

- (a) Advise John and Jane.

- (b) If John and Jane were able to lodge a caveat/caution against the title, outline to them the procedures open to Maxine to seek its removal and the likelihood of her success in such an application.
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### QUESTION 5

Zena is the owner of a vacant lot of land the title to which is unregistered. She entered into the following transactions of this property:

On May 3, 1998 she obtained a loan from Rose for \$100,000 and created an equitable mortgage with the deposit of the documents of title.

On July 6, 1999, she entered into agreement for sale to Aster for \$600,000. Under the Agreement he promised to pay the full purchase price in quarterly instalments to complete in April 2001.

On September 1, 1999, Rose handed over the title deeds to Zena, at her request, to deal with a boundary dispute. Rose never requested their return and Zena used the title deeds to obtain a legal mortgage from Quick Finance Ltd. with whom she deposited the deeds.

Rose who has recently discovered the entire state of affairs now consults you.

- (a) Advise Rose.
- (b) Would your answer be any different if title to the land was registered and Aster had lodged a Caveat/Caution in respect of his interest?
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**QUESTION 6**

Isaac Wills and his wife Jenny are the owners as joint tenants of their home to which title is unregistered. They are desirous of building a flat to the rear of the land, which they intend to move into and to give the house they now occupy to their son Jacob, and his family. They have approached their bank for a loan to assist with the new building and to effect repairs to the house. The bank manager has advised them that the bank is unwilling to give the loan on the security of unregistered land.

They consult you.

- (a) Advise Isaac and Jenny of the differences in the two systems of land ownership and outline to them the advantages of having a registered title.
  - (b) Outline to them the information and documents required to make application for registered title.
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**QUESTION 7**

- (a) On April 23, 1996 Joe Veecool died testate, his estate comprising entirely of 6 acres of registered land. Prior to his death however, he had sold this land for a nominal sum to his daughter, Lizanne, who was born outside of his marriage. He had put Lizanne in possession of the property but never executed a Transfer of the land to her.

Joe Veecool named his wife his sole executor and trustee of his Will. Mrs. Veecool has refused to obtain a grant of probate in Joe's estate or

which he would demand that they "buy him out". The others ignored these outbursts and he eventually stopped using "Seascape".

In October 1999 Stephen and Julia were killed in a motorcar accident. By their Wills Stephen left all his property to his mother, Lurline, and Julia left all her property to her sister, Karen.

Jane and Mark are keen on selling "Seascape" for \$3,000,000 to Pruella Divine of Duncans Ville, St Phillip.

- (a) Advise Jane and Mark as to exactly who owns "Seascape" and in what proportion.
  - (b) Assuming that the Wills of Stephen and Julia have been probated and their personal representatives have carried out all of their functions, draft the Deed of Conveyance to Pruella Divine.
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JAMAICA S. S.

**THIS DEED OF CONVEYANCE** is made the *12<sup>th</sup>* day of *April* One Thousand Nine Hundred and Ninety Four BETWEEN **FELIX BENJAMIN SMITH** of North Coast in the Parish of St Margaret, Businessman, **CLIFFORD ALLAN SMITH** of 17 York Street, in the Parish of St Andrew, Plumber, (hereinafter called "the Vendors") of the ONE PART and **JANE LESLIE** of Stewarts, in the Parish of St Mary, **STEPHEN BELFAST** of 34 Bell Road, in the Parish of Belmont **JULIA WEEKS** of Yorkers in the Parish of St Mary and **MARK HEMPS** of Gordon Town in the Parish of St Margaret, Attorney-at- law and Businessman respectively (hereinafter called "the Purchasers") of the OTHER PART

WHEREAS the Vendors are seized of an estate in fee simple in possession free from encumbrances in the hereditaments described in the First Schedule hereto and intended to be hereby conveyed (the documents of Title to which are for the purposes of reference set out in the Second Schedule hereto) AND WHEREAS the Vendors have agreed with the Purchasers for the Sale to them of the said hereditaments and all their estate and interest therein for the consideration hereinafter expressed NOW THIS INDENTURE WITNESSES that in consideration of the sum of One Million Two Hundred and Fifty Thousand Five Hundred Dollars (\$1,250,500) paid by the Purchasers to the Vendors (who hereby acknowledge the receipt thereof) the Vendors as beneficial owners DO HEREBY CONVEY UNTO the Purchasers ALL THAT parcel of land and the hereditaments described in the First Schedule hereto TO HAVE and TO HOLD the same UNTO and TO THE USE OF the Purchaser the said JANE LESLIE of Stewarts, in the Parish of St Mary, STEPHEN BELFAST of 34 Bell Road, in the Parish of Belmont JULIA WEEKS of Yorkers in the Parish of St Mary and MARK HEMPS absolutely.

#### FIRST SCHEDULE

ALL THAT piece or parcel of land part of NORTH COAST in the Parish of Saint Margaret containing by survey Two Acres Two Roods Eight Perches and Seventy Eight Hundredth of a Perch of the shape and dimensions and butting as appears by Plan or Diagram thereof prepared by D. St A. Dixon from a survey made by him on the 20th March, 1990 a copy of which said plan is attached hereto and marked "A" for identification.