

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL
LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2006

CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, AUGUST 4, 2006)

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

Modern Buildings Ltd. is a company duly incorporated under the laws of your jurisdiction. The company has recently acquired five acres of land on the east coast of the territory and wishes to develop the land by constructing single family dwellings in a gated community with a view to attracting young professionals.

The land is restricted to use for agricultural purposes but a luxury apartment complex was constructed on the adjoining property about two years ago and farming is still the major employer in the district. The residents also strongly support residential development in the district.

Mr. Millard, the company's managing director, consults you and asks that you advise the company on the following:

- (i) the procedural steps to be taken to address the matter of the restriction on use of the property, taking into account the document(s) required and the contents of such document (s).

- (ii) the legal argument(s) that Modern Buildings Ltd. may use in their favour in addressing the restriction on user.

QUESTIONS 2 AND 3 ARE BASED ON THE FOLLOWING FACTS

Norma is the executrix and beneficiary of four acres of registered land under her father's Will. Norma wishes to subdivide the land into two lots of equal size, one of which would be sold. She would like to keep the other lot for herself and her two children, Jonathan and Julia, as tenants in common.

QUESTION 2

Advise Norma on the procedural steps to be taken to subdivide the land, taking into account the documents required and the contents of each document.

QUESTION 3

- (i) Assuming that the land has been subdivided, outline the procedural steps Norma would be required to take to vest the land in herself and her two children.

- (ii) Draft the document required to vest the land in Norma and her two children, Jonathan and Julia.

QUESTION 4

By Instrument of Mortgage registered as No. 222 of 2003, John and Ionie Mills mortgaged their dwelling house situate at Paradise Bay to Money Bank Ltd. for

\$10M. The dwelling house sits on 15,000 square feet of land overlooking Paradise Bay. The house was featured in a recent issue of Top Class magazine, an international publication, as part of a series on the top twenty private villas in the Caribbean.

John Mills, a businessman, has been facing financial difficulty for some time now and the mortgage has not been paid for the last three months.

A few days ago Ionie received a telephone call from her best friend Joan, who saw an advertisement in the local paper that the house was being sold by Nice House Real Estate for \$10M or nearest offer. Ionie was in shock and most embarrassed. Only then was she able to figure out why so many vehicles with curious onlookers had stopped from time to time over the past few days. At the time she thought that persons were simply admiring the property, especially after the publicity received from the Top Class magazine.

John was extremely angry when Ionie told him what she had learnt, not least because he had no notification of the intended sale from the Money Bank Ltd. and also because the last valuation done about six months ago for insurance purposes stated that the property was worth at least \$18M.

John and Ionie seek your advice on the following:

- (i) the procedural steps that Money Bank Limited, as mortgagee, must take to exercise their power of sale and the matters to be taken into account in so exercising their power of sale;
- (ii) what options do John and Ionie have in the circumstances.

QUESTION 5

The following notes have been passed to you by the partner with whom you work in the firm. The instructions are that you prepare the agreement for sale on behalf of the vendor with appropriate insertions or additions, as you deem necessary.

Vendor: Analiese Barnett (majority shareholder/director of Barnett & Co. Ltd., trading as “BCL”)
Purchaser: James Jamieson and Joanne Jamieson
Property: Fully furnished 3 bedroom/2 bathroom apartment; now occupied by tenants
Purchase Price: \$4.5 million – an initial payment of 25% on signing agreement, balance on completion

Taxes etc. to be apportioned according to law;

Purchasers to get mortgage from National Housing Fund

- (i) Prepare a draft agreement for sale for Ms Barnett’s perusal.

- (ii) Prepare a memorandum to the partner outlining your advice to the vendor on her request for an initial payment by the purchasers of 25% of the purchase price on the signing of the agreement. (Not more than 150 words.)

QUESTION 6

By his Will, Jonathan, now deceased, made the following devise:

“I appoint my wife Cutie as Executor. I appoint Ronnie and Katie my Trustees. I devise my property known as ‘Cloud Nine’ located at 18 Heaven Ave. to my wife Cutie for life and thereafter to our daughter Valerie.”

Cutie is anxious to sell ‘Cloud Nine’ because of all the memories of her husband that the property kept alive. If a sale does not materialize in short order she wants to purchase the property for her favorite nephew, Paul, who is getting married in June.

Advise Cutie on the following:

- (i) the procedural steps to be taken towards realizing a sale of the property.
- (ii) the matters that must be considered and the guidelines to be followed if Cutie wishes to purchase the property for her nephew, Paul.

QUESTION 7

Peta-Ann Lowe, a public relations practitioner, has entered into an agreement to sell all of her fee simple interest in her condominium/strata unit to Verona Grandison, a teacher, who now resides at 122 Lakeshore Rd., St. Ann. The

property is registered as 32 Gardens of Oleander in the parish of St. Ann and is mortgaged to Shady Building Society. Peta-Ann tells you that the Loans Officer at Shady Building Society told her in a recent conversation that the title to the property cannot be found since a break-in at the offices of the Building Society two months ago.

Peta-Ann seeks your advice and assistance on the following:

- (i) the procedural steps to be followed to acquire a new duplicate Certificate of Title/Land Certificate;
- (ii) a draft of the transfer document for her perusal.

QUESTION 8

In May 2006, Jon Michael orally agreed to sell Pauline 2 acres of land, the title to which is registered. Pauline confirmed the arrangement in a letter to Jon Michael in June 2006. In that letter she enclosed \$500,000 indicating that the payment represented “part payment on the transaction”. She promised to pay the balance “when title to the land is exchanged”.

Jon Michael sent a receipt to Pauline for the money paid together with a note dated June 30, 2006 stating that Pauline “can now take possession of the property pending completion as was discussed.”

Pauline has now written to Jon Michael indicating that her application for a mortgage was turned down and she now has to find another way to pay the

balance. In the circumstances she is seeking Jon Michael's approval to make payments in instalments over a period of 6 months.

Jon Michael is very upset saying that he never contemplated that the balance of the purchase price would have been paid by a mortgage. That in any event there was no agreement for sale in the first place as he never signed any agreement for sale with Pauline.

Jon Michael wants to know if he can get out of the deal, put the land back on the market and forfeit Pauline's deposit for having suffered the inconvenience of waiting over two months to learn that Pauline is not in a position to pay the balance.

Advise Jon Michael.