

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2019

CONVEYANCING AND REGISTRATION OF TITLE

(August 00, 2019)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **FIVE** questions.
- (c) In answering any 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.**
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in black or dark blue ink. Erasable pens are not allowed.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In January 2019, Samuel Servright orally agreed to purchase the fee simple interest in an undeveloped parcel of land from Curtis Goodacre. The land is registered at Volume/Block 1220 Folio/Parcel 442 of the Register Book of Titles/Land Register. Samuel made a payment of \$100,000 as a deposit towards the purchase price. With Curtis's knowledge and agreement Samuel thereafter erected a fence around the land.

Samuel has been making payments to Curtis in instalments and since February has been preparing the land for cultivating coffee. Samuel has paid \$800,000 to date and has shown you the receipts, all of which are signed by Curtis. There is an outstanding balance of \$200,000. Consistent with Samuel's understanding of the arrangement, he says he will continue to pay Curtis \$100,000 per month, until full payment is made in October 2019.

Curtis has now advised Samuel that he (Samuel) must pay the balance by the end of August, failing which he (Curtis) will keep all payments made to date and remove Samuel from the land. Curtis's reason is that it is taking Samuel too long to complete payments and in any event, since he did not sign a written contract, technically there is no agreement.

Samuel is upset because he has incurred a great deal of expenditure in preparing the land for cultivation and is now worried that he will lose his investment. He tells you that, if, in October, after making the final instalment on the purchase price, he does not receive title to the property duly registered in his name, he intends to institute legal proceedings against Curtis.

Samuel wants to know what steps he can take, in the interim, to secure his interest in the property.

Advise him on the following:

- (i) the procedural steps he should take to immediately protect any interest he is claiming in the property, identifying any document(s) that may be necessary and their contents; and

- (ii) the options open to Curtis in response to any step that he (Samuel) may take pursuant to your advice in (i) above.
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QUESTION 2

Brenda Burton, a widow, residing at Fort George in the jurisdiction, died on April 4, 2019. During her marriage to Dennis Burton, now deceased, they had raised two children, Jacinto and Fernando, who are now young adults. Brenda, at the time of her death, was the sole registered proprietor of the four-bedroom house at Fort George in which she lived.

Fernando, the elder of the two children, has done well in business, while Jacinto has not been successful in any of the business enterprises on which he has embarked. Fernando has also managed to buy his own home, where he lives with his wife and children, whereas Jacinto lives with his girlfriend in rented accommodation.

Prior to her death, Brenda, in an attempt to give both sons and their families a share in the Fort George property, drafted her Will so that it devised the property to Jacinto, for him to use and enjoy for as long as he lived, and thereafter, to Jessica and Summer, who are Fernando's children and her only grandchildren.

Jacinto is upset over the manner in which the property has been devised. He feels that having regard to his difficult financial situation, the property should have been left to him exclusively. He is also not sure as to what rights he has in the property seeing that Jessica and Summer have also been given interests therein. He is getting married shortly and wants to provide for his future wife and children. He comes to see you with a copy of the Will, and tells you as follows:

1. his mother has appointed her two sisters, Alana and Hazel, to be the executors and trustees of the Will;

2. he and his girlfriend are getting married in the coming month and intend to start a family;
3. he wants you to advise him on the nature and extent of the rights he has to deal with the property left to him under his mother's Will; and
4. he wants to be able to provide for his future wife and children, in the event of his death, by disposing of the property to them by means of his Will.

Prepare a letter to Jacinto, advising him of:

- (i) the nature and extent of the rights he has to deal with the Fort George property; and
 - (ii) the steps he would be required to take to allow the property to pass under a devise in his Will to his future wife and children on his death.
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QUESTION 3

Carl Lloyd is the registered proprietor of property known as Stonehedge Estate. Carl's position as a senior marketing executive was made redundant two years ago. He subsequently set up his own business, offering marketing services to small businesses.

Carl had obtained a loan of \$5,000,000 from Better Loans Bank Limited (the Bank), secured by a mortgage over Stonehedge Estate, to assist with the startup of the business. However, the business has been very slow in taking off and he has missed his monthly mortgage payments for the last seven months.

The Bank's Loans Manager tells you that from the moment he became aware that the loan account was falling into arrears, he tried calling Carl but Carl never returned any of his calls. Eventually, he was able to reach Carl and set up a meeting, but the meeting was not very productive. At the meeting, Carl demanded that the Bank re-negotiate the terms of payment or lower the "ridiculous" interest rate to assist him. He got very upset when he (the Loans Manager)

refused to entertain either option. Carl ranted and raved that in his opinion, the Bank was taking advantage of him and other poor people who were trying to make a living. He said that he had no intention of allowing the Bank to sell his property, that he had found a buyer and would settle the balance outstanding on the loan out of the proceeds of the sale.

The Bank's Loans Manager consults you. He is incensed by Carl's aggressive behaviour. He insists that if the proposed sale does not materialize within the next two weeks, he intends to sell the property to another customer of the Bank, who he knows would be willing to purchase same for \$5,000,000 in cash.

Prepare a letter to the Bank's Loan Manager, advising him on the procedural steps to be taken by the Bank in exercising its power of sale, and the matters to be taken into consideration by the Bank when doing so.

QUESTION 4

Paul Selvon is the sole executor under the Will of his elder brother Chris Selvon. In January 2019, Paul obtained a grant of probate in Chris's estate. Under the terms of his Will, Chris has devised to his only child, Rihanna, his fee simple interest in a three- bedroom townhouse on Garden Close in the jurisdiction. Rihanna has decided to sell the townhouse to her good friend Serena Willows and contracts have been exchanged. She has now retained you to handle the sale on her behalf.

A perusal of the title for the property reveals as follows:

1. in 1980, Chris and his wife, Rose, purchased the Garden Close townhouse as joint tenants and are still on the title as proprietors; and
2. the property was mortgaged in 2011 to Peoples National Bank Limited to secure the sum of \$ 8,000,000.

Paul advises you that:

- (a) Rose died in 2016;
- (b) Chris died in May, 2018; and
- (c) The sum of \$ 500,000 is still outstanding on the mortgage.

Advise Paul on the procedural steps required to complete the sale to Serena Willows. Your advice must refer to the documents required and their contents.

QUESTION 5

Martin Stollmeyer is a well-known property developer in the jurisdiction. He owned a large parcel of land in the district of Richfield, which in 1998, he subdivided into 29 lots measuring 4,000 square metre each and, one 8,000-square metre lot. He constructed a dwelling house on each of the 4,000-square metre lots, and between 1999 and 2000, he was able to sell them all to purchasers. He retained the 8,000-square metre lot, with a view to constructing his dream house.

The following restrictions appear on the title for all of the lots in the subdivision:

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

Martin is currently in dire financial straits and can no longer afford to build his dream house. He sees the possibility of settling all of his debts if he is able to build a six unit condominium /strata complex (with a view to selling the individual apartments) on the 8,000–square metre lot retained by him. He intends to apply to the court to have the restrictions discharged so as to facilitate his proposed development.

At least 14 of the other lot owners have told Martin that they have serious concerns in relation to the proposed development. They feel that the neighbourhood has developed into an exclusive one and that the proposed development will open it up to too many persons. They intend to take

whatever legal steps may be available to them, including proceeding to court, to object to this development.

Your instructions are to advise the lot owners as to the likelihood of the court upholding their objections, giving reasons.

QUESTION 6

Richard Sarwan is registered as the sole proprietor of the fee simple interest in a property situated on Oval Avenue in the jurisdiction. The property consists of a fully furnished five-bedroom dwelling house on 1500 square metres of land.

Richard has agreed to sell the house to Maizie Lloyd. He comes to your office and provides you with the following details:

1. Maizie will require a mortgage loan of approximately 70% of the purchase price;
2. she wants to take possession prior to completion, and she wishes to purchase the house along with some of the furniture and appliances that are presently in it;
3. he has no problem with including some of the furniture and appliances as part of the sale;
4. the purchase price is \$30,000,000 and he requires an initial payment of \$5,000,000 on the signing of the agreement, and the balance on completion;
5. Maizie does not want to incur the expense of effecting insurance on the house, until she is registered as proprietor; and
6. he wants to complete the sale within four months and he does not intend to grant any extensions on the completion date.

Your instructions are to prepare a memorandum to Richard, setting out the matters which you consider it important to advise him on, including the following:

- (i) the general terms and conditions you would seek to insert in the agreement for sale; and
 - (ii) the special terms/conditions you would recommend be included in the agreement for sale and the content of such terms/conditions.
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QUESTION 7

Vicky Shurland is the proprietor of the fee simple interest in a condominium/strata unit located at 143 Hawthorne Lane in the jurisdiction. The property is mortgaged to First Citizens Building Society (the building society). In July 2019, Vicky settled the balance outstanding on the mortgage. She wants to add her sister Ruth's name to the title, as Ruth is the only relative she has in the jurisdiction.

Vicky tells you that one week after settling the balance outstanding on the mortgage loan, she received a letter from the building society requesting her to attend their offices to collect her Duplicate Certificate of Title/Land Certificate, as the mortgage had been discharged. She was unable to go in at that time, as she was about to leave the jurisdiction to attend a three-week conference abroad. On her return, she attended the offices of the building society, where she was told by the Manager of the Loans Department that the Duplicate Certificate of Title/Land Certificate to the property could not be found, after a break-in at the offices of the building society two weeks ago.

Vicky seeks your advice on the following:

- (i) the practical implications of not having the Duplicate Certificate of Title/Land Certificate;
- (ii) the procedural steps to be followed to acquire a new Duplicate Certificate of Title/Land Certificate; and

(iii) what steps would she be required to take to add Ruth as the joint holder of the fee simple interest.

Advise Vicky. Your advice in (i) and (ii) must include identifying the document(s) required and their contents.

QUESTION 8

Bertram Brown died intestate three years ago at the age of 93. No steps have been taken by his family to deal with his estate.

Bertram was predeceased by his parents, as well as by his wife, Norma. He is however survived by his two children, Jonas and Talia, and his only grandchild, Marcus, who is Jonas's son. Marcus, who is 23 years old, has been asked by the family to take the necessary steps to deal with the estate.

Prior to his death, Bertram had lived for most of his life on a property called Rumsfield Plantation, comprising over three hectares of unregistered land in the district of Cedros in the jurisdiction. After Bertram's death, Jonas and Talia moved into the house on Rumsfield Plantation.

Marcus comes to see you and tells you that he needs your assistance in 'sorting out the estate'. He says that the first thing he would like to do is to obtain a registered title for Rumsfield Plantation.

In a letter to Marcus, advise him on the procedural steps to be taken to obtain a registered title. Your advice must include reference to any documents that may be required and their contents.

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