

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2006**

**CONVEYANCING AND REGISTRATION OF TITLE**

**(TUESDAY, MAY 23, 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.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

## **QUESTION 1**

You have received the following letter from Jason Jones who now lives and works in New York, USA:

***“Dear Sirs,***

***My name is Jason Jones. I now live and work in New York, USA as a teacher. On January 21, 2006 I entered into a contract with National Housing Ltd. (“NHL”) to purchase one half acre of land located at Palmetto Heights in the parish of St. Peter. This property is supposed to form part of a new development targeting persons in the Diaspora in North America. My wife Joan and I have great plans for building our dream home on the property and hope to retire quietly on this property a few years from now. However, our dreams seem to be just that – a dream! Although the land is already registered we have agreed as a term of the contract that completion will be on subdivision approval being obtained by NHL. Contracts have been exchanged and a deposit of 10% and two interim payments amounting in total to 52% of the purchase price have been paid to date to NHL through their attorneys-at-law, Regents & Regents, 10 Townsend Street.***

***While reading the Island’s weekly newspaper online on Sunday last (a must for me as it keeps me in touch with home) I was flabbergasted when I read that the NHL had entered into a strategic alliance with a big foreign investor for the development of the entire Palmetto Heights property. I asked my old schoolmate who still lives on the island to check on the details of the story and he confirmed that this deal concerns the very property, part of which I have contracted to purchase.***

***What am I to do? I desperately need your help. My friend tells me that there may be ways to protect my interest until the matter is sorted out. I***

***can't imagine losing my hard earned investment without a fight. Please let me know what I can do?***

***Yours truly,***

***Jason Jones."***

Advise Jason on:

- (i) The procedural steps that he can take to protect his interest as an immediate first step to addressing his situation, explaining the legal basis for your advice;
  - (ii) The procedural steps that may be taken by the relevant persons in responding to the action recommended to Jason in (i).
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## **QUESTION 2**

Condoleeza Flowers is scheduled to meet with you to discuss your representing her in the purchase of a condominium/strata property. She is hoping to relocate her beauty spa business there immediately on completion of the sale. The notes left by your personal assistant indicate that Condoleeza wants to purchase the property with her husband Derrick, a supervisor at a local manufacturing company.

The Flowers have one daughter, Megan, their pride and joy, who will be 16 years old on December 25, 2006. Naturally they want her to inherit the property. Condoleeza understands from the real estate agent that the vendor has declared

a preference for a cash sale and that interim payments be made until completion because the vendor is hoping to use the proceeds of sale to purchase another property that requires similar terms of payment. However, the Flowers will need a mortgage representing 70% of the purchase price and have already approached their Building Society. The property is to be sold semi-furnished. The furnishings will comprise 5% of the purchase price. The property is presently occupied.

In preparation for your initial interview with Condoleeza:

- (i) prepare a checklist of inquiries and searches you would recommend that she should make as a preliminary step to entering into an agreement for purchase of the property;
  - (ii) draft the important terms that, as purchaser, you would advise be contained in the agreement for sale.
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### **QUESTION 3**

George Maxwell is a property developer conducting business as GMAX Developers Ltd. George is developing the Langfield Estate into a shopping mall. Gillian has contracted to purchase one of the units as an investment and has already entered into an agreement to lease the unit for use as a pastry shop. Completion is scheduled for May 24, 2006 when separate title to the unit will be handed over in exchange for the balance of the purchase price.

Gillian was just advised that George wants to change the completion date to sometime in July 2006 because construction has been delayed by the recent

cement crisis. Some units had been built with faulty cement and have had to be demolished and there has been further delay because of the shortage of cement. Gillian is most upset because the transaction has been a difficult one from the start.

Negotiations with her financiers for a mortgage to complete the sale have been protracted and to date there are still some issues to be sorted out. However, Gillian expects to hear from the bank any time now. Additionally, the lessees have been pressuring her to hand over the keys to the property. Gillian has instructed you to immediately indicate to George that the transaction must be completed by June 15, 2006 failing which she will pull out of the arrangement and sue the developers.

- (i) Advise Gillian.
  - (ii) Prepare an appropriate response to George.
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#### **QUESTION 4**

Patricia by her Will appointed Dennis and Janet as her executors and devised Lot 25 registered at Volume/Block 10 Folio/Parcel 40 of the Register of Titles/Land Register to Jon Michael.

The Executors now consult you as to how and when they should pass Lot 25 to Jon Michael.

- (i) Advise Dennis and Janet.

- (ii) Outline the contents of the documents necessary to effect the transfer to Jon Michael.
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### **QUESTION 5**

Eleanor is the registered proprietor of an estate in fee simple of property known as 5 Happy Avenue in the parish of St. Peter, registered at Volume/Block 444 Folio/Parcel 190 of the Register of Titles/Land Register.

The property is part of lands comprised in a sub-division registered in 1990 and made subject to the following covenant/restrictive agreement:

“No shop, school, trade, business or commercial building or other building of any kind shall be erected on the said land other than a private dwelling house with appropriate outbuildings.”

Eleanor has earned the reputation of being an excellent masseuse having worked at the local branch of the internationally acclaimed chain Imani Massage Parlour for 15 years. Eleanor plans to leave the job and open her own massage parlour. She plans to erect a building at the side of her property in an area where she already has well appointed gardens and a fountain.

Eleanor is of the opinion that her business would succeed not least because she believes that her clients at the Parlour will follow her and also because her property is located at one end of a cul-de-sac and should not interfere with her immediate neighbours' use and enjoyment of their properties. Also persons in the neighbourhood are predominantly retired persons who could benefit

personally by having a massage parlour readily available to them in their neighbourhood.

- (i) Advise Eleanor on the likelihood of success of an application by her for modification and/or discharge of the covenant/restrictive agreement.
  - (ii) Outline the information required for an affidavit supporting Eleanor's application to modify and/or discharge the covenant/restrictive agreement.
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### **QUESTION 6**

David Bassie has an outstanding balance of \$1 million on a mortgage loan of \$4,500, 000 from National Finance Limited. The loan was given on the security of commercial premises owned by David, located at 25 Marcus Drive, title to which is registered. The premises consist of several buildings including a 300 sq. ft. warehouse and offices from which David operates an insurance brokerage business.

David is four months in arrears of his mortgage payments, amounting to total arrears of \$650,000 inclusive of interest. David, through his attorney-at-law, has indicated to National Finance Limited that he has finalised negotiations with the principals of Manufacturers Limited for a five year lease of the entire warehouse space for \$75,000 per month and that the entire proceeds of the lease arrangement will be paid over to National Finance Limited until the debt is paid in full.

The Loans Officer of National Finance Limited consults you. He is insisting on instructing an auctioneer to put up the entire property for sale because David has

treated his obligations under the mortgage with contempt in being consistently late with his monthly payments and is now in arrears for four months.

Advise the Loans Officer of National Finance Limited on how best to handle the matter, bearing in mind the obligations of and steps to be taken by the mortgagee in realising its security.

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### **QUESTION 7**

Jacinth Pretty and Hazel Lyn are the executors and trustees named in the Will of Roshelle Jolie who died leaving property known as Lot B situate in Spauldings in the Parish of St. George with registered title.

In her Will, Roshelle made the following devise:

*“All of my property at Spauldings, I leave to my dear niece Roya for life remainder to her two handsome sons Barry and Eugene absolutely.”*

Roya who is quite ‘business savvy’ is looking for an opportunity to sell the property as soon as possible as it is located in a very desirable neighbourhood and should command a good price. Her church brother, Robert Riley, is a property developer and has already indicated an interest in acquiring the property should she decide to sell.

The executors have expressed their concern that Roya is being too hasty in taking such a drastic step to dispose of the property and are also concerned about the future of Barry and Eugene, both teenagers.



Advise Jacinth and Hazel on:

- (i) the steps that Roya would be required to take to sell the property, if indeed she has any such authority; and
  - (ii) the role to be played by them in their capacity as trustees.
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### **QUESTION 8**

After contracts were exchanged, Petal, the purchaser of a vacant lot of land, became aware of the following:

- (a) The property was used as a cemetery for animals that died from a foot and mouth disease epidemic that affected the animal population in the district about 30 years ago. Petal intends to use the land to grow orchids and other exotic plants for export.
- (b) The vendor has absolutely refused to respond to requisitions made on title, claiming that the contract clearly states that he is not obligated to answer.
- (c) The survey report reveals that the total land area is two and one quarter acres. The contract states that the total land area is two and one half acres.

Petal believes that these are signs that she should not buy the land. She confirms that she had a palm reading done and is convinced that she must get out of the contract.

Advise Petal on her options in respect of each of the above concerns and whether she can rescind the contract.

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