

FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2007

CONVEYANCING AND REGISTRATION OF TITLE

(TUESDAY, MAY 22, 2007)

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

Mr Shakai “DJ Terrible” Bellamy is an icon in the music industry of international acclaim. Shakai is registered on title as the sole proprietor of the fee simple interest in property known as 22 Music Road in the parish.

The Duplicate Certificate of Title/Land Certificate shows *inter alia* the following restrictions:

“No building other than a private dwelling house with appropriate outbuildings thereto shall be erected on the said land and no building erected on the said land shall be used for the purpose of a shop and no trade or business whatsoever shall be carried on upon the said land or any part thereof.”

Shakai has, over the past year, hosted “DJ Nights” on the last Friday of each month at 22 Music Road, allowing aspiring DJs to display their talents on the lawns of the property. Persons in the district are allowed onto the property to enjoy the music.

Mr and Mrs Gerald Tarrant, returning residents, are the registered proprietors of the property which adjoins 22 Music Road. They have complained bitterly of the negative impact of ‘DJ Nights’ and have even called the police on at least one occasion.

The police report states that Mr and Mrs Tarrant have complained of the noise from both the music and the patrons of DJ Nights, the increase in vehicular traffic sometimes blocking the entry or exit to the Tarrant’s premises and generally the undesirable characters the events attract. The Tarrants further complain that

such activity, if continued, is bound to diminish the reputation of the area and the value of their property.

However, Shakai tells you that all of his other neighbors have been very supportive and see this event as a means of opening up opportunities for the youths in the area.

Shakai now wants to renovate the house at 22 Music Road to facilitate a well equipped modern music recording studio which would cater to the needs of young artistes in the music industry.

Shakai is seeking your assistance in making an application to permit his use of the premises as a music recording studio.

Advise Shakai on the following -

- (i) What procedural steps would be required to make the application for permission to use the property as a music recording studio, taking into account the document(s) required and the contents of such documents.
 - (ii) Whether on your current instructions there is a sufficient basis for a successful application. Give reasons.
 - (iii) What further instructions you would require (if any) to assist with making an application.
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QUESTION 2

Flora, who is now 16 years old, is the registered proprietor of the fee simple interest in property known as 'Pleasant Home' registered at Volume/Block 19 Folio/Parcel 20 of the Register Book/Land Register.

Flora has been in the care of her aunt, Jessima Reilly, who is her legal guardian.

Jessima tells you that she is making preparation for Flora's University education but thinks that she would have to sell 'Pleasant Home' to assist with the anticipated costs. She tells you further that she would like to purchase the property herself as a way of honoring her deceased sister's (Flora's mother) memory.

In preparing for your next meeting with Jessima, clearly outline the matters that you will advise that she should take into account in pursuing the transaction.

QUESTION 3

Janice and Delroy have been in a common law relationship for several years. Janice tells you that the title to the three bedroom dwelling house which she shared with Delroy for the duration of their relationship is registered in Delroy's name as sole proprietor of the fee simple interest.

Janice further tells you that for purposes of obtaining the mortgage from the bank, without too much trouble, she had agreed with Delroy that his name alone would be on the title since, as a civil servant, he was the one who had a

permanent job with a steady income. Janice is self employed and is an interior decorator.

Janice says that she shared the mortgage payments by reimbursing Delroy half of the monthly payments and she contributed significantly to all household expenses. In fact she was solely responsible for the decisions to be made on interior and exterior design and decoration.

The relationship has ended and Janice has moved out of the house. However, she has learnt, through a real estate agent, that Delroy has listed the house with them for sale.

Janice now seeks your advice on the following -

- (i) the initial procedural steps you would recommend that she takes as a matter of urgency;
- (ii) the basis for your recommendation; and
- (iii) the steps that you anticipate Delroy could take if Janice follows your recommendation.

Advise Janice.

QUESTION 4

By Agreement for Sale dated March 2, 2007, Jerry Jones agreed to sell his fee simple interest in his home to Jacinta Bowen. The property is known as 66 Tryall Road, and is registered at Volume/Block 200 Folio/Parcel 46 of the Register Book of Titles/Land Register.

In perusing the Agreement for Sale, you note the following material terms outlined -

“... Purchase Price	Three Million Dollars (\$3,000,000)
Deposit	\$450,000 to be paid to the Vendor’s Attorneys-at-Law
Completion	June 25, 2007
Area of Property	10,000 sq. ft. ... ”

Contracts were exchanged on March 16, 2007, and the deposit paid.

The Duplicate Certificate of Title/Land Certificate was kept in a combination safe in Jerry’s master bedroom.

On April 4, 2007, Jacinta obtained a Surveyor’s ID Report which found that the premises comprised of 9,895 square feet and not 10,000 square feet as stated in the agreement.

On April 25 while Jerry was at work, he received a telephone call from his neighbor, Sheron Blake that his house was on fire.

A subsequent assessment showed that the report from the Fire Department indicated that the main damage was contained to the master bedroom, which was totally gutted and that nothing was saved from that room.

Jacinta is refusing to complete the contract and has demanded a refund of her deposit from Jerry. His instructions to you are that Jacinta must complete the contract.

Jerry seeks your advice on the following -

- (i) the procedural steps that he must follow to obtain a new Duplicate Certificate of Title/Land Certificate to meet his contractual obligations in the event that the sale will proceed to completion. List the document(s) that Jerry may need to prepare, summarising the contents of such document(s); and
- (ii) the problems that he will face in dealing with Jacinta's refusal to complete and how they can be addressed.

Advise Jerry.

QUESTION 5

By Agreement for Sale dated January 2, 2007, Thomas Simple agreed to sell and Hezekiah Miserable agreed to buy all of the interest in property registered at Volume/Block 784 Folio/Parcel 209 of the Register Book of Titles/Land Register for \$5,000,000. The contract is an open contract and completion has been set for May 31, 2007.

Thomas Simple died suddenly on February 15, 2007, before he was able to execute the instrument of transfer. Mr Simple's widow, Minna, has sought your advice on how she should proceed in the following circumstances.

Minna tells you that Hezekiah has been most unsympathetic and unreasonable in that very shortly after Mr Simple's death, Hezekiah called her about completing

the sale as he was also selling his property and would require possession on the completion date as agreed.

She tells you that she has also just received a letter from Hezekiah's attorney-at-law, Mr Robert Counsel of Counsel & Counsel, High Street in the parish. The letter states *inter alia* that Hezekiah had completed the sale of his own home since April 30, 2007, and has been living in a guesthouse pending completion of this transaction. He has also been paying storage fees for his furniture since May 1, 2007.

Minna explains that she is the Executrix and sole beneficiary of her husband's estate and that probate has been granted. However, she has been so distraught about her husband's sudden departure that she has not been able to function effectively since the incident. In the circumstances she does not wish to be further burdened by having to deal with the sale transaction and is seriously contemplating not pursuing the sale.

Advise Mrs Minna Simple on the procedural steps that she would be required to follow in the event that she has to complete the sale.

QUESTION 6

By Agreement for Sale dated March 10, 2007, Lori Small agreed to sell to Peter Grandeur all of her fee simple interest in property registered at Volume/Block 140 Folio/Parcel 12 of the Register Book/Land Register.

The agreed purchase price is \$10,000,000. Contracts were exchanged and Peter paid the deposit and a further payment totaling \$1,500,000. Completion is set for three days from today.

Peter Grandeur shows you a letter he has just received from Lori's attorney-at-law, Mr. John Lawyer, with offices located at 20 Court Road, stating that Lori would not be in a position to complete on the agreed date. Lori is therefore seeking an extension of three months on the completion date.

Peter tells you that he has learnt through the grapevine that Lori has rented the premises to persons attending a training course that is being held in the jurisdiction. It is his understanding that the lease terminates in three months time.

Peter is incensed by the turn of events and tells you that having successfully negotiated his mortgage, he would be required to commence repayments within a month.

Peter's instructions to you are that he is not willing to give more than a one month extension of time. If Lori cannot meet the extended time, he will demand completion and a return of all payments made to Lori as compensation for the inconvenience.

- (i) Advise Peter on the procedural steps that he should take in response to the letter from Lori's attorney-at-law, explaining your recommended approach.
- (ii) Prepare any draft document(s) you may deem appropriate in support of your advice in (i).

QUESTION 7

The following notes have been passed to you by the partner with whom you work-

“Please prepare for an interview with the client/purchaser. He wants our advice on his proposed purchase:

Vendor: Henry Green - land developer in joint venture with New Homes Land Development Ltd.

Purchaser: Devon & Mary Chamberlain – No.1 New Rd., St. John

Property: New three bedroom unit in new complex – client believes that it is a strata/condominium complex of about 15 -20 units. Not all units sold to date.

Purchase Price \$10 million – portion to be paid on signing the agreement;

Client needs mortgage to complete the sale. Client is now in rented premises so wants to move in as soon as possible.”

Prepare a checklist of the matters you consider to be important in advising the client/purchaser on the proposed sale, carefully considering your role as the

purchaser's attorney-at-law with responsibility for perusing the draft agreement for sale.

QUESTION 8

Mason Cameron and his wife Julia tell you that by a mortgage dated April 20, 2004, New Homes Building Society loaned them \$7,500,000 to assist with the purchase of their 2 bedroom home. The property is located at 50 Happy Drive and is registered in the names of Mason and Julia Cameron as joint tenants and was used to secure the interest of New Homes Building Society as mortgagees.

Since purchasing the house in 2004, the Camerons have made significant improvements to the entire property. Two *en suite* bedrooms were added, fully equipped with modern high quality furnishings and fixtures. With the assistance of a landscape architect, the Camerons developed a beautiful outdoor environment that was featured by the local Horticultural Society in their last monthly newsletter. A valuation done six months ago for insurance purposes valued the property at \$18,000,000. The valuation was required by and submitted to the bank as a term of the loan agreement.

The Camerons have failed to pay the monthly mortgage payments for the last three months as they were faced with a high medical bill incurred when Mr. Cameron had to undergo emergency surgery.

The Camerons show you the following advertisement that was published in local daily paper of May 14, 2007 -

“House with registered title for sale by public auction pursuant to Powers of Sale contained in a Mortgage. Property located in desirable residential area.

Auction Sale will be held on May 15, 2007, at the premises of auctioneers Grant & Thatcher, 29 Gavel Road.”

The Camerons tell you that they saw the advertisement on the evening of May 14, 2007, and called the Building Society’s Loans Officer at 10:00 am on May 15, 2007. At that time they were advised that the property had been sold to one May Tomlin for \$10,000,000 which represented the principal and interest that was due to the building society. The Camerons have since learnt that May Tomlin is the sister-in-law of the Building Society’s General Manager.

Advise the Camerons.
