

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2015

CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 15, 2015)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Paulette and Prudence are the registered proprietors of a parcel of land registered at Volume/Block 1399 Folio/Parcel 396 of the Register Book of Titles/Land Register.

The property is mortgaged to Money Bank Limited for one million dollars. The loan had been settled years ago but the mortgage had never been discharged from the title.

Prudence and Paulette have entered into an agreement with Lascelles Gordon to sell the property to him for six million dollars. It is a cash sale and Lascelles has indicated that he is anxious to complete the transaction.

Money Bank Limited has advised that the Duplicate Certificate of Title/Land Certificate was destroyed in a fire that took place in the vault at its head office where all the Duplicate Certificates of Title/Land Certificates held as security are kept.

Advise Prudence and Paulette on the procedural steps they would be required to take to complete the sale without the Duplicate Certificate of Title/Land Certificate.

Your advice must make reference to any document(s) required and the information required to complete them.

QUESTION 2

National Bank Limited is one of your major clients. Over the years, most of their lending has been aimed at first time home owners seeking mortgage financing.

The bank has requested that:

- (i) you write to them listing the options open to the bank in the event of default by a borrower; and
- (ii) you prepare a comprehensive checklist of the procedural steps that must be followed when the bank wishes to exercise its power of sale. You are to include short notes on the considerations that would inform the steps outlined.

QUESTION 3

Meredith, Althea and Phillip are the registered proprietors as joint tenants of property known as 60 Harmony Drive. The property is registered at Volume/Block 240 Folio/Parcel 1804 of the Register Book of Titles/Land Register.

Meredith and Althea both died in 1990.

Phillip took no steps to deal with the property as he lived in Canada for many years and had no intention to return to the jurisdiction.

Phillip died two weeks ago, leaving all of his estate to his wife, Sasha. His estate includes the Harmony Drive property, title to which is still held in the names of the three joint tenants. Sasha is the sole executor of Phillip's Will and she has already obtained a grant of probate out of the Supreme/High Court in the jurisdiction.

Sasha now seeks your advice as to what steps would be required to have title to the Harmony Drive property vested in her name.

You are to outline the required procedural steps, any documents required and the contents of such documents.

QUESTION 4

You have been asked to meet with Neisha, a first time purchaser of a strata/condominium unit in an existing development. The title for the particular unit that Neisha is buying has already been issued.

You are told that Neisha will need a mortgage to complete the sale. In addition, Neisha is hoping to be allowed to take possession of the unit as soon as the contract is executed. This would allow her to terminate the monthly rental of the townhouse in which she presently resides. She expects that this saving in rental would increase the funds available to her to spend on decorating her new home.

In preparation for your meeting with Neisha, prepare a checklist of the matters you consider important to advise her on, including the following:

- (i) any preliminary enquiries and searches you would deem appropriate;
- (ii) the general terms she should expect to see in the agreement for sale; and
- (iii) any special conditions you would suggest be inserted in the agreement for sale.

QUESTION 5

By agreement for sale dated January 1, 2015, Lynette agreed to sell the fee simple interest in her three-bedroom townhouse to Michael for \$5,000,000. Contracts were executed and exchanged. Michael made a payment of \$750,000.

Under the terms of the agreement, completion was to take place on or before April 1, 2015 with vacant possession, and on presentation of a registrable instrument of transfer and the Duplicate Certificate of Title/Land Certificate.

On March 14, 2015, Lynette received a letter from Michael, advising that he (Michael) would not be in a position to complete on the agreed date, and would require a four-week extension within which to complete the sale. He said he had incurred some unexpected medical expenses due to illness in his family. Lynette consented to the requested extension.

The time has passed and to date Michael has not made contact with Lynette on the matter. Lynette is very upset about Michael's discourteous behaviour. Furthermore, in a conversation with Michael's sister-in-law, Alison, Lynette has recently learnt that Michael's need for an extension of time arose from gambling debts he had incurred, and had nothing to do with an illness in his family. It is rumoured that he is facing serious financial challenges.

Lynette instructs you to write to Michael, advising that she is no longer interested in completing the sale, that she will keep the entire payment of \$750,000 and will find another purchaser.

Prepare a letter to Lynette advising her on the following:

- (i) whether you can accept her instructions as given, giving reasons; and
- (ii) the steps you recommend she takes to deal with her concerns over Michael and his ability to purchase the property.

Your advice must identify any document(s) you consider necessary in the circumstances and its/their contents.

QUESTION 6

By agreement for sale dated March 1, 2015 Aubrey Finch agreed to purchase from Ronald Dosramos a dwelling house situated at 21 Carlos Avenue in the jurisdiction. The property is registered at Volume/Block 199 Folio/Parcel 434 of the Register Book of Titles/Land Register. Under the agreement Aubrey is entitled to vacant possession on completion which is set to take place on May 31, 2015.

After the contracts were exchanged and before completion, Aubrey became aware of the following:

- (a) The roof of the dwelling house is in a serious state of disrepair. It is termite infested and will have to be replaced.
- (b) The surveyor's report reveals that the total land area is 12,800 sq ft and not "13,000 sq ft more or less" as stated in the agreement for sale.
- (c) Ronald's niece, a student at the university in the jurisdiction, is occupying the premises as a paying tenant.

Aubrey is contemplating rescinding the contract and demanding the return of his deposit.

Advise Ronald generally in respect of each of the above discoveries in light of Aubrey's claim for rescission.

QUESTION 7

Peter, Junior and Jonathon had all been classmates at Howard University in Washington, where they had all studied architecture.

In 2010 when they returned to the jurisdiction, they formed a firm offering architectural services. There is no written partnership agreement.

Peter says that the three partners agreed to purchase the property from which they had been conducting the business. Title to the property is registered in the names of Junior and Jonathon as joint tenants in fee simple.

Peter explains that at the time, for strategic reasons, a deliberate decision was taken that his (Peter's) name would not be on the title, though he had contributed a one-third share towards the purchase price of the property.

Peter tells you that the other two partners are attempting to illegally exclude him from the firm. He shows you a letter signed jointly by Junior and Jonathon that states, *inter alia*, that his services as senior architect were no longer required as the business was being down-sized to meet the challenges of the stagnant economy in which they were now operating.

Peter is angry as he believes his interest in the property is at risk, especially since his name is not on the title. He tells you that he is seriously considering legal action against Junior and Jonathon.

Prepare your advice to Peter:

- (i) outlining the procedural steps he should take, apart from court proceedings, to immediately protect any interest he is claiming in the property. Your advice must refer to any document(s) that may be required, summarizing their contents; and

- (ii) setting out the options open to Jonathon and Junior in response to any step that he (Peter) may take pursuant to your advice in (i) above.

QUESTION 8

Aliesha and Dan Morris reside at 30 Calcutta Avenue. The title to the property is registered in their names as joint tenants of the fee simple interest therein. The property consists of a three-bedroom dwelling house on a half acre of land with the following restrictions on the title:

- “... 1. The said land shall not be subdivided*
- 2. No building other than a private dwelling house with appropriate outbuildings shall be erected on the said land and no trade or business whatsoever shall be carried on upon the said land or any part thereof.”...*

Aliesha and Dan want to build a block of apartments on part of the land as a part of their retirement plan. They intend to sell some and rent others. They are now negotiating with National Bank Limited and tell you that the bank is concerned that building the apartments will be in breach of the restrictions on title.

Dan says that several buildings on Calcutta Avenue are either condominiums or apartment complexes.

Aliesha and Dan are anxious to start the project and must get the bank’s financing to do so.

Advise Aliesha and Dan on the procedural steps they must take to address the bank’s concerns about the restrictions on the title. You are to identify in your advice any document(s) required and summarise their contents.

END OF PAPER

