

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2018

CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 11, 2018)

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. Erasable pens are not allowed.

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

## **QUESTION 1**

Phyllis and Patrick have been happily married for over thirty years. They live in a townhouse on Starboard Drive in the jurisdiction. The title to the property is registered in their joint names. They hold all of their assets jointly, except for a villa which Patrick inherited under his mother's Will, the title to which is registered in his sole name.

Patrick recently died, and in his Will he left the villa to Phyllis, for the duration of her life and on her death, to their godson, Travis. He appointed his two sisters, Jade and Sybil, the executors and trustees under his Will.

Phyllis is devastated at Patrick's death. She wants to migrate and change her environment. She would like to sell all her assets in the jurisdiction. She is concerned, however, that she may not be able to benefit financially from the villa, given the terms of the Will.

She comes to see you and asks that you advise her on the following:

- (i) the options open to her for giving up her interest in the villa and getting cash in exchange; and
  - (ii) the matters she must consider, and any procedural steps she would be required to follow, given your advice in (i) above.
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## **QUESTION 2**

Zenith Recording Studio is managed by the partners, Gerrard, Sheldon and Jordan. There is no written partnership agreement. The partnership is not working out. Sheldon tells you that the other two partners are attempting to illegally exclude him from the firm. He shows you a letter signed jointly by Gerrard and Jordan, stating that his position with the Studio has been made redundant due to a restructuring of the business.

Sheldon explains that the property from which the business is conducted is held in the joint names of Gerrard and Jordan. The agreement has always been that his (Sheldon's) contribution to the partnership would be his skills as an engineer, and that each of the three partners would have a one-third interest in the property and the business in general.

Sheldon insists that he has an interest in the property and wants to pursue his claim in court. He wants to know what he can do to protect his interest, pending the outcome of the court proceedings.

Prepare your advice to Sheldon:

- (i) outlining 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) setting out the options open to Gerrard and Jordan in response to any step that he (Sheldon) may take pursuant to your advice in (i) above.
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### **QUESTION 3**

By Agreement for Sale dated January 8, 2018, Nicholas Chang agreed to sell to Jake Phillips, for the price of \$40,000,000, all his fee simple interest in property registered at Volume/Block 1010 Folio/Parcel 441 of the Register Book of Titles/Land Register. Jake made an initial payment of \$4,250,000 when he signed the contract.

Under the terms of the agreement, completion was to take place on or before April 8, 2018. On March 25, 2018, Nicholas received a letter from Jake, advising that he (Jake) 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 gave no reason as to why he needed the extra time to complete. Nicholas orally agreed to the requested extension.

The time has passed and, to date, Jake has not made contact with Nicholas on the matter. Nicholas is very upset, especially as he has learnt through friends of Jake, that Jake wishes to

postpone completion as he is low on funds at the moment, having recently completed the purchase of a new Mercedes Benz SUV.

Nicholas instructs you to write to Jake, advising that he is no longer interested in completing the sale, that he will keep the entire payment of \$ 4,250,000 and will find another purchaser.

Prepare a letter to Nicholas advising him on the following:

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

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

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#### **QUESTION 4**

In 2002, Justin Brooks, a sole trader, began operating a restaurant and catering business out of rented premises located at 21 Queens Park Avenue in the jurisdiction. In 2007, as the business was doing well, he decided to expand his operations. He obtained a loan of \$8,000,000 from Cash Bank Limited to assist with the expansion. The loan was secured by a property owned by Justin and located in The Hamptons, an exclusive residential neighbourhood in the jurisdiction. The property comprised six acres of land, and Justin had received planning permission to erect a complex comprising eight two-bedroom townhouses with attendant amenities. He has not proceeded with any construction on the property, but he has spent money on having it professionally landscaped.

Over the past year and a half, business has declined, due mainly to mismanagement and labour disputes. Justin has not made the monthly mortgage instalments due to the Bank for the last three consecutive months. He instructs you as follows:

1. his property at The Hamptons was included in a list of properties published in a local newspaper about two weeks ago, advertising a public auction sale by the Bank, acting under its power of sale;

2. the advertisement reads as follows:  
*“Vacant lot for sale pursuant to Powers of Sale contained in a Mortgage. Property registered at Volume/Block 133 Folio/Parcel 656. Public Auction to be held at the offices of DC Duval Auctioneers, on Wednesday, May 3, 2018”*
3. the Bank never told him that the property was going to be sold;
4. on seeing the advertisement, he wrote and hand-delivered to the manager of the Bank, a letter proposing that the monthly mortgage payment be reduced for a few months;
5. the Bank has replied to him, rejecting his proposal on the ground that they have already agreed in principle to sell the property to Randy Mason by private treaty;
6. he understands that the sale agreement is being prepared by the Bank’s attorneys-at-law for execution by the parties; and
7. he has heard that Randy Mason and the manager of the Bank are the sole shareholders and directors in a company, Prime Homes Limited, which is involved in real estate development.

Prepare a letter to Justin advising him on the following:

- (i) the specific matters to be taken into account in order to determine whether the Bank has acted properly in attempting to exercise its power of sale; and
- (ii) the options that may be open to him in the circumstances.

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### **QUESTION 5**

Frank and Emma McQueen own a seaside villa on Lighthouse Road in the jurisdiction as joint tenants. The property is registered at Volume/Block 1444 Folio/Parcel 525 of the Register Book of Titles/Land Register.

On January 31, 2018, they entered into a written agreement to sell the property to Elizabeth D’Arcy and they received the deposit.

Elizabeth has been given four months to complete under the Sale Agreement.

On May 1, 2018, Emma was seriously injured in a car accident while on holiday in Colorado in the USA. She was hospitalized but eventually died on May 10, 2018, from the injuries she sustained. Frieda Smart, her sister, is the sole executrix named in her Will.

Frank comes to see you with the written agreement and tells you the following:

- (i) Elizabeth is pressing him to complete the sale transaction.
- (ii) He is unable to find the title to the property. Emma kept all the important family documents in a locked safe in their bedroom. He has searched there but has not located it.
- (iii) He needs your advice on what is required to complete the sale to Elizabeth.

Advise Frank on the procedural steps that must be taken to complete the sale to Elizabeth. Your advice must include reference to any documents that will be required and the contents of same.

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## **QUESTION 6**

Roger Branson recently inherited from his grandmother, Ethel, a five-bedroom, three-bathroom house, located at 8 Prada Boulevard in the jurisdiction. The house stands on an acre of land. It is presently unoccupied.

Roger wants to capitalize on the increasing need for commercial space in the area. He plans to demolish the house and erect a complex, comprising professional and other offices, which he will then sell to prospective purchasers.

Prada Boulevard is a traditional residential area. However, over the years, there has been significant commercial development in very close proximity to Prada Boulevard. These include a shopping mall, a multi-storey commercial office complex and a private school.

Roger comes to see you and instructs you as follows:

1. The following restrictions appear on the certificate of title/land certificate for the property:
  - “1. The said land shall not be further subdivided.*
  - 2. 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.”*
2. All of the properties located on Prada Boulevard have similar restrictions on their certificates of title/land certificates.
3. The Prada Boulevard Citizens’ Association is very active and is constantly working to preserve the residential status of the area.
4. He wants your advice as to how he can vary the restrictions to facilitate his plans for the property.

Advise Roger on the following:

- (i) the nature of the application he would be required to make to modify or discharge the restrictions so as to facilitate his plans for the property, including the document(s) required and the contents of such document(s); and
- (ii) the likelihood of success of such an application.

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## **QUESTION 7**

The following notes have been passed to you by Terrence Fitzwilliam, the partner with whom you work in the firm. You are expected to use these notes to assist your preparation of an agreement for sale on behalf of the Vendor:

1. Vendor(s) - Melissa Grant and Meredith Grant registered on the title as joint tenants. Meredith Grant is now deceased
2. Purchaser - Denton Company Limited
3. Property - fully furnished studio apartment
4. Purchase Price - \$15,000,000 an initial payment of 25% on signing the agreement, balance on completion
5. Taxes etc.– to be apportioned according to law
6. Purchaser to obtain mortgage financing from Island Mortgage Bank
7. Purchaser to obtain possession prior to payment of balance of purchase price

Prepare a memorandum to Mr Fitzwilliam outlining your advice on:

- (i) the general terms and conditions you would seek to insert in the agreement for sale;
- (ii) the special terms/conditions you would recommend be included in the agreement for sale to address the issues set out at 1, 3, 4, 5, 6 and 7;
- (iii) the content of such special terms/conditions and the reasons for including them;
- (iv) any further instructions you will need to assist in your preparation of the agreement for sale.

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### **Question 8**

Kyla is the executrix and beneficiary of a parcel of unregistered land, which was a gift to her under her father's Will. Kyla wishes to sell the land and she has identified a prospective purchaser who has indicated an interest. However, the purchaser is only interested in proceeding with the purchase if the land is registered land.

Advise Kyla on the procedural steps she would be required to take to register the land. Your advice must include reference to any documents required and the contents of such documents.

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**END OF PAPER**