

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE EXAMINATIONS 1975

CONVEYANCING AND REGISTRATION OF TITLE

Instructions to Students

- a) Time: 3½ hours.
- b) Answer FIVE questions only.
- c) It is unnecessary to transcribe the questions you attempt.

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QUESTION 1.

Arthur Spender of 1, Great House Circle, registered at Volume 1 Folio 4 St. Andrew, Civil Servant, acquired the above premises on the 1st January, 1970 and obtained a mortgage of \$10,000 on security of same for five years at 9% per annum from A.O. Vendor of 1, Circle Street, St. Andrew, Farmer.

The mortgage term expired on the 31st December, 1974 and at that date the principal sum due amounted to \$5,000 (interest having been paid to date). The mortgage instrument was in common form.

The mortgagee has agreed to allow the balance of principal to remain on mortgage for a further five years at 10% per annum with sinking fund payments of \$1,000 to be made on the 31st December in each year. The mortgagee also insists that the mortgagor's wife, Mavis Spender, should guarantee Arthur Spender's obligations under the mortgage.

You act on behalf of the mortgagee, Mr. Vendor, who consults you as to the form of document which should be prepared to give effect to the extension of the mortgage.

Prepare the necessary Instrument for the parties to sign and incorporate the form of guarantee as part of the document.

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QUESTION 2.

Peter Brook by his will dated 12th August, 1972 devised his property consisting of a house and 25 acres of land to his wife for life with remainder to his two infant sons Raymond and George as tenants in common in equal shares in fee simple.

The land was not registered under the Registration of Titles law at the date of Peter's death in November 1972.

Peter's brother, Selvin Brook, was the sole executor appointed by Peter Brook under his will.

Selvin Brook obtained Probate in Peter's estate on the 30th December, 1972 from the Supreme Court of Judicature of Jamaica.

Selvin paid Peter's debts and funeral expenses but died intestate in New York, U.S.A., where he had gone to reside.

Selvin died intestate on the 1st March, 1973 before taking any further steps in the winding up of Peter Brook's estate.

Peter Brook's widow, Mavis, consults you on the 10th March, 1973 and hands you a copy of the probate in her husband's estate as well as a conveyance dated 1st January, 1936 which she found amongst her husband's papers. The conveyance was from Richard Snaith to Peter Brook and it was clear that Mr. Brook had purchased the land from Mr. Snaith for \$500.

Mrs. Brook confirms that her husband had lived on the property from the date of purchase until his death in 1972.

Mrs. Brook introduced her sons to you at the interview and stated that they were 15 and 16 years of age respectively.

Mrs. Brook was clearly having difficulty in making two ends meet and informed you that she has a prospective purchaser for one acre of the property for \$10,000. The purchaser insisted on having a registered title for the portion of land he wished to acquire and Mrs. Brook now requests you to take the necessary steps to obtain a registered title.

Mrs. Brook asks you to prepare a draft of the application to register so that she may inspect same at her next visit to your office.

Prepare the necessary application to register and include at the end of the application a schedule of the documents you regard necessary for submission with the application.

It is appreciated that some of the documents you will wish to include with your application will not be available at the time Mrs. Brook visits you a month later. However you should state in the application the type of documents you will ultimately require in order to complete the application to register.

Mrs. Brook's brother, John Worrysome, has offered to help in whatever way he can and asks you (with his sister's permission) to write him a short memorandum explaining what documents you will need to submit with the application to register.

Write a short memorandum explaining what documents you will be including in the application to register and the reason for each.

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QUESTION 3.

Arthur Smith, retired Inspector of Police, the owner of premises 1, Park Lane, Kingston registered at Volume 100 Folio 10 in fee simple is now 75 years of age and is in poor health.

He consults you with a view to transferring the land to his son, James Smith, of the same address, Revenue Runner, for natural love and affection.

Arthur wishes to reserve an annuity of \$500 per annum for life from the 1st June, 1975.

Prepare the necessary transfer from Arthur Smith to his son to give effect to the wishes of Arthur Smith.

Arthur Smith also asks you to explain the significance of an annuity charged on land.

Give a short explanation of the significance of an annuity so charged with particular emphasis on the rights open to Arthur Smith in the event of the payments not being honoured as well as his position if his son should predecease him or sell the premises during Arthur's lifetime.

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QUESTION 4.

John Brown and his wife Mavis were separated on the 31st March, 1974. They were joint owners in fee simple of the matrimonial home, 1, Friendship Park Road, at the time of the separation.

Mr. Brown rented the premises to Mr. V.G. Lessee on the 1st April, 1974 and has been collecting the rents of \$100 per month payable on the first day of each month in advance as of the 1st April, 1974.

Both Mr. and Mrs. Brown have entered into an agreement to sell the premises to the tenant Mr. V.G. Lessee, the date fixed for completion being 31st March, 1975, the purchase price being \$30,000.

The purchaser has agreed to pay one half the vendors cost of sale (these being stamp duty; registration fees and attorneys fees).

You act for Mr. Brown only and his wife's attorney-at-law has agreed to your having the carriage of sale and he expects you to account not only for the proceeds of sale but also for rents and outgoings since Mrs. Brown left the matrimonial home.

Mr. Brown has agreed to lend the purchaser \$5,000 on security of the property sold to assist the purchaser in completing the transaction and likewise Mrs. Brown has agreed to lend a similar sum of \$5,000. The costs of the mortgage will be \$175.

Prepare the account which you will have to render to Mrs. Brown's attorney-at-law on behalf of your client Mr. Brown.

The following information has been supplied to you by Mr. Brown in relation to the sale and accounting:-

1. Mr. Brown has paid taxes of \$110 for 1 year to the 31st March, 1974 out of his own pocket and taxes of a similar amount are due for the year ending 31st March, 1975.
2. Mr. Brown has collected all rents due to the 31st March, 1975.
3. The stamp on the transfer will be \$300; the registration fees \$40 and the attorneys fees \$200.
4. Fire insurance has been paid for two years to the 31st March, 1976 at \$100 per annum - these having been paid by Mr. Brown from the rents.
5. Water rates were paid by the tenant up to the date of completion under the terms of the tenancy agreement as part of his obligations thereunder.

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QUESTION 5.

The prospective purchaser in Question 2 above, Mr. John Grasp of 1, Park Avenue, New York, U.S.A., consults you as to the form of agreement which he should sign. By this time, it is now June of 1975 and you have joined a new firm of attorneys, Messrs. Hurry and Co., and you contact your friend Richard Speed of your old firm of Speed, Haste and Co., who is representing the interests of the estate of Peter Brook.

You are advised by Mr. Speed that the application to register the land has been lodged but provisional approval has not yet been granted.

However, the estate is badly in need of cash and Mr. Speed would like to see an agreement for sale signed with a hefty deposit of \$5,000 the full purchase price being \$10,000.

The purchaser now has no objection to signing an agreement although a registered title has not yet been obtained.

Your client asks you to draft the necessary form of agreement for sale and he states that he will rely on you to include the usual terms you consider appropriate to protect his interest.

Your client asks you to particularly note the following matters:-

1. The purchaser will be borrowing \$2,000 on security of the acre of land purchased at the usual rate of interest on which attorneys now lend money, namely 12% per annum.

He tells you that he is getting the loan from the Grace Building Society in Kingston and they have given him a letter of commitment dated 1st June, 1975.

2. Your client wishes to ensure that the remainder of the lands owned by estate Peter Brook will only be used for residential purposes (as the purchaser intends to use his lands for the same purpose).
3. Your client also understands that a private road runs from the remainder of the lands retained by the estate of Peter Brook through the portion of land being acquired by your client, and joins the mainroad.

Although this is an alternative private access road to the mainroad it has been used infrequently by the estate of Peter Brook and the owners of another adjoining property called Wellacre owned by a Mr. Welcome, Farmer, for the past 15 years.

Your client fears that it may detract from the value of his land to have other persons use the private road. Accordingly he asks that you make the necessary provision for him to be able to prevent this user from continuing whenever it pleases him.

Draft the form of agreement which you consider appropriate having regard to the instructions given to you by the purchaser.

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QUESTION 6.

A property known as Constant Spring Estate consisting of 20 acres of land and registered at Volume 10 Folio 17 was sub-divided into 20 parcels of land in 1942 and sold by the owner, Mr. Alex Spring, to individual purchasers who all erected homes on their lots.

The sub-divider, Mr. Spring, at the date of each sale informed each purchaser that similar covenants had been imposed on other lot owners and that the remainder of the lands would be sold subject to similar covenants.

In each case Mr. Spring showed the purchasers a plan of the area with the various lots and roadways of the sub-division. All the lots were sold over a period of 2 years.

The contract and transfer to each purchaser provided (and the operative words only are quoted) as follows:

"The purchaser agrees with the vendor that the lot purchased by him will only be used for residential purposes and the benefit of the covenant shall be for the benefit of the vendor, his heirs and successors in title. As well the covenants shall be for the benefit of each of the owners of the lots which are part of the lands registered at Volume 10 Folio 17."

All the titles were endorsed accordingly.

Your client, Mr. Norman Developmeir of 1, Maiden Lane, Kingston, purchased one of the lots from Mr. Spring in 1944 and occupied it as his home for 10 years. He rented it to Mr. A. Merchant, who converted the buildings into offices as real estate agents. About six other lot owners occupy their holdings as shops and offices and one is occupied by a doctor partly as a home and as a surgery.

The main road through the sub-division has become a busy thoroughfare to a busy shopping centre complex nearby. On the other fringes of the sub-division a supermarket and small shops have sprung up over the years.

Your client wishes to sell his holding being Lot 10 registered at Volume 16 Folio 11 to Mr. A. Merchant who is not prepared to buy unless your client clears up the question of the covenants.

Your client asks you whether or not the covenants are binding. Advise him.

Assuming that the covenants are enforceable, draft the necessary form of affidavit in support of an originating summons to modify the covenants so that the lands may be used for shops and offices. In so doing you should, inter alia, set out the grounds of the application.

QUESTION 7.

P, the registered proprietor of ten acres of land, the title being registered at Volume 10 Folio 100 of the Register Book of Titles, by an agreement in writing of the 10th January, 1958, agreed to sell his land to B. B was then put into possession but he has never lodged a caveat to protect his interest.

In January, 1960, P received a loan of \$5,000 from the XY Bank Ltd. by way of equitable mortgage by deposit of his registered title. Before granting the loan, the manager of XY Bank Ltd. inspected the property but there was no evidence to suggest that any person other than P was in possession.

In February, 1960, XY Bank Ltd. lodged a caveat to protect its equitable mortgage. Later, the Bank learnt of the agreement for sale between P and B and thereupon filed an action for a declaration that its equitable mortgage ranked in priority to B's equity.

Examine the respective claims of XY Bank Ltd. and B as to the priority of their respective interests.

Would it make any difference if the manager of the bank had seen B cultivating the land when he visited it?

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QUESTION 8.

(i) R contracted in writing to sell his freehold land to P, the title of which was registered at Volume 2 Folio 10 of the Register Book of Titles, but died shortly after. His personal representative A, has decided to complete the transaction and now consults you. On investigating the title you discover that a caveat against any dealings with the said lands has been lodged by S, a relative of R, who claims an interest in the said land.

How would you proceed and what are the duties of the Registrar of Titles in this regard?

(ii) Your client C, wishes to purchase a condominium unit and seeks your advice as to the likely nature of his rights and liabilities in a condominium corporation.

Advise him.

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