

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2016

CONVEYANCING AND REGISTRATION OF TITLE

(AUGUST 9, 2016)

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

Cofmate Limited is a private company incorporated under the companies legislation of the jurisdiction. Noel and Cecil Williams are the sole shareholders and directors. The company owns and operates a large coffee plantation in an area known as the Red Mountains in the jurisdiction.

The company is interested in expanding its operations and the Bank has recently approved its application for a loan to fund this expansion. The Bank wants to take a mortgage over the Red Mountain property as security for the loan. The company is anxious for the matter to proceed as quickly as possible.

Noel and Cecil come to your office, to discuss the matter, and seek your assistance in relation to two problems they have in relation to the title. They instruct you that:

- (a) the certificate of title is not available. The title was in the custody of their previous attorney, Mr. Ricardo Miller, a sole practitioner, with offices at 4 Duke Street in the jurisdiction. Mr. Miller has recently advised the company that his offices were broken into and a number of important documents, including the title for the coffee plantation property, were now missing. He has reported the burglary to the police, but so far they have not made any breakthrough in the matter and the whereabouts of the title remain a mystery.
- (b) a caveat/caution against all dealings with the land has been lodged by their elder brother, Norris, who is claiming that, as a previous shareholder in the company, he has an interest in the property.

Noel and Cecil ask that you advise them on:

- (i) the options open to the company to deal with the caveat/caution; and

(ii) the procedural steps required to replace the lost/destroyed Duplicate Certificate of Title/Land Certificate. Your advice must make reference to any document(s) required and the information required to complete them.

Advise them.

QUESTION 2

First Peoples Building Society has been in the business of mortgage loan financing for over 40 years. The Society, prior to 2015, commanded the lion's share of the first-time homeowners' market in the jurisdiction.

In the year 2015, on two separate occasions, legal proceedings were instituted against the Society by mortgagors, who alleged that the Society had exercised its power of sale in an improper manner. The claimants, on each occasion, were successful in these proceedings.

The managing director wishes to reduce the possibility of similar claims being made against the Society in the future. He has asked you to prepare a memorandum, which he will circulate to his mortgage managers, setting out the procedural steps that a mortgagee is required to take to properly exercise its power of sale, and the matters to be taken into account in so doing.

Prepare the memorandum.

QUESTION 3

David Trott is a property developer. He conducts his housing development business through his company, TownHomes Developers Limited. David is at present involved in constructing an exclusive townhouse complex in an area known as Richfield in the jurisdiction.

Raquel has contracted to purchase one of the units in the complex as an investment. The sale agreement has been executed by both parties and Raquel has paid over the required deposit.

The agreement is subject to her obtaining a mortgage to complete the sale, and she has just received the mortgage commitment letter from her bank.

Completion under the contract is scheduled to take place on August 30, 2016, when a separate title for the unit will be handed over in exchange for the balance of the purchase price.

Raquel has already identified a person to whom she can lease the unit, and in fact, has already entered into a lease agreement with that person.

Raquel has just been advised by David that he wants to extend the completion date to the middle of November 2016, because, construction has been delayed due to the recent heavy rains which caused severe flooding in the jurisdiction.

Raquel is quite distressed at the thought of a delay in completion. Her tenant is expecting delivery of the keys by September 1, 2016. Raquel is certainly not willing to wait beyond September 21, 2016.

Raquel wants you to write David and advise him, that the construction must be completed by September 21, failing which, she will pull out of the contract and sue TownHomes Developers Limited for recovery of her deposit.

- (i) Advise Raquel on the procedural steps she should take in response to David's request for an extension, explaining your recommended approach.
 - (ii) Prepare any document you may deem appropriate pursuant to your advice to Raquel above.
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QUESTION 4

In May 2005, Matthew and Mary Crauley bought their first home, a two-bedroom house situated on Willow Lane in the jurisdiction, and comprised in certificate of title /land certificate registered at Volume /Block 1200 Folio/Parcel 360 of the Register Book of Titles/Land Register. They paid 8 million dollars for the property and obtained a mortgage loan from Penny Bank Limited to assist with the purchase.

Eleven years later, they now wish to sell the Willow Lane property. They have identified a purchaser, Emily Windsor, who is willing to purchase same for 10 million dollars. The purchaser will be financing the purchase with her own funds and contracts have already been exchanged.

There is a balance of 1 million dollars still owing on the mortgage to Penny Bank Limited.

They intend to use the proceeds of sale to purchase a five-bedroom house, and they are considering registering their son, Adam, aged 15, on the title with them.

Prepare a letter to Matthew and Mary:

- (i) outlining the procedural steps to be taken to complete the sale and vest ownership of the property in the purchaser. Your advice must include reference to the documents (including any correspondence to Penny Bank Limited) that will be required and the contents of same; and

- (ii) advising them of any likely implications which may arise from registering Adam on the title in the manner they have proposed.
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QUESTION 5

Carson Squires is the sole executor under his grandmother's Will. His grandmother, Cora Squires, died 12 months ago. The greater part of her estate consisted of a 12-acre property known as "Granthom Plantation" comprised in certificate of title/land certificate registered at Volume/Block 1399 Folio/Parcel 359 of the Register Book of Titles/Land Register. Under the terms of the Will, this property has been devised to Cora's adult granddaughter, Elizabeth Squires.

Carson has recently been granted probate of the Will.

In perusing the endorsements on the title for the property, he realises that the title is still registered in the joint names of both his grandmother and her late husband, Robert, who had predeceased her. Carson remembers that it was Robert's lodge brother, Cecil, who had obtained a grant of probate in his (Robert's) estate.

Advise Carson on the procedural steps required to have Granthom Plantation vested in accordance with the terms of the Will. Your advice must include identifying the documents required and their contents.

QUESTION 6

Cedric Austen died, testate, five years ago at the age of 86. No steps have been taken by his family to deal his estate.

Gavin Austen, his grandson, who has recently graduated from university, has now been asked by the family to take the necessary steps to deal with the estate.

Prior to his death, Cedric had lived for most of his life on a property called Springfield Plantation, comprising over 40 acres of unregistered land in the Springfield district of the jurisdiction. After Cedric's death, Gavin's parents moved to Springfield and occupied the property.

Gavin comes in to see you and tells you that he needs your assistance in "sorting out the estate". He says that the first thing he would like to do is to obtain a registered title for the property.

In a letter to Gavin, advise him on the procedural steps to be taken to obtain registered title. Your advice must include reference to any documents that may be required and their contents.

QUESTION 7

Jelani Olatunde, also known as "DJ Fantastic", is a well known artiste in the music industry in the jurisdiction. Jelani is registered on the title as the sole proprietor of the fee simple interest in property located at 3 Turntable Avenue in the jurisdiction.

Turntable Avenue is part of a residential neighbourhood known as Ellerslie Park. Over the years, some of the houses in the neighbourhood have been converted into professional offices.

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 trade or business whatsoever shall be carried on upon the said land or any part thereof.”

Jelani has, over the past year, hosted “DJ Nights” on the last Saturday of each month at 3 Turntable Avenue. At these events he allows aspiring DJs to perform on the lawns of the property. Persons in the district are allowed to attend to enjoy the music.

Lennard and Jane Hoff are the registered proprietors of the premises adjacent to 3 Turntable Avenue. They have complained bitterly of the disturbance created by the holding of these events and they have called the police on a number of occasions.

The police report states that the couple has complained of the noise from the music and the patrons of DJ Nights, the increase in the vehicular traffic and generally the undesirable characters the events attract.

Jelani, however, tells you that all of his other neighbours have been quite supportive and see the event as a means of opening up opportunities for the youth in the area.

Jelani now wants to renovate the house at 3 Turntable Avenue to facilitate a music recording studio which would cater to the needs of young artistes in the music industry. He comes to see you for assistance in making an application to the court to permit him to use the premises as a music recording studio.

Advise Jelani on the following:

- (i) the nature of the application he would be required to make to permit him to use the premises as a music recording studio, including the document(s) required and the contents of such document(s); and
- (ii) the likelihood of success of such an application.

QUESTION 8

Lionel Bravo, a client of yours, is the registered proprietor of the fee simple interest in a four-bedroom house situated on Cricket Avenue in the jurisdiction. The property is registered at Volume/Block 1144 Folio/Parcel 190 of the Register Book of Titles/Land Register. Lionel has entered into negotiations with Daisy Sarwan in relation to the sale of the property to her.

Lionel has called to see you and has provided you with the following details:

- (i) Daisy will need a mortgage loan of approximately 55% of the purchase price to assist with the purchase of the property;
- (ii) there is a tenant presently occupying the house, but he has promised Lionel to vacate same prior to completion of the sale;
- (iii) Daisy wishes to take possession immediately on the signing of the sale agreement, as her landlord intends to raise her rent in September, and she wishes to avoid any additional costs at this time;
- (iv) he has, at Daisy's request, included the furniture and appliances in the house, as part of the sale; and
- (v) once the agreement is signed, he does not intend to entertain any delays in completion, as he urgently needs the proceeds of sale to fund the purchase of a villa on the coast and he has already signed the sale agreement.

In preparation for your meeting with Lionel, prepare a checklist (with brief explanatory notes) of the matters you consider important on which to advise him, including the following:

- (a) the general contract terms he should expect to see in the agreement; and
- (b) any special conditions you recommend be included in the agreement.

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