

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2017

CONVEYANCING AND REGISTRATION OF TITLE

(AUGUST 00, 2017)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Spring Limited is a private company incorporated under the companies legislation of your jurisdiction. The company manufactures and distributes bottled water. It conducts its operations out of premises located at 102 Blue Mountain Ridge in the jurisdiction. Title to the property is registered at Volume /Block 1600 Folio/Parcel 667 of the Register Book of Titles/Land Register. A warehouse and administrative offices are located at the premises.

On August 4, 2017, thieves broke into the premises and stole a large quantity of bottled water, as well as a safe, which was normally kept in the office of the managing director, Russell Williams. Russell and his brother, Ronald Williams, are the sole directors and shareholders of Spring Limited.

Russell comes to your office to discuss the matter, and seeks your assistance. He instructs you that:

- (a) all of the company's official documents were kept in the safe, including the Duplicate Certificate of Title/Land Certificate for the property;
- (b) when it was discovered that the building had been broken into and the safe and the boxes of bottled water were missing, he called the police the same day; and
- (c) the police have begun an investigation into the incident but to date they have not been able to identify the persons responsible or the items missing.

Advise Russell on:

- (i) the practical implications of not having the Duplicate Certificate of Title/Land certificate; and
- (ii) the procedural steps required to replace 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

Frank Talbot, and his wife Sybil, tell you that in 2001, First Peoples Building Society lent them \$5,000,000 to assist with the purchase of their two-bedroom home. The property is located at 14 Kendall Avenue, and is registered in the names of Frank and Sybil Talbot, as joint tenants. The property was used to secure the interest of First Peoples Building Society, as mortgagee.

Over the years the Talbots have made significant improvements to the entire property. They added three bedrooms and an infinity pool. They also enlarged the existing kitchen, equipping it with modern high quality fixtures and furnishings. With the assistance of a landscape architect, they developed the grounds and gardens of the property. The gardens were recently featured in the monthly newsletter of the local horticultural society. A valuation done six months ago, for insurance purposes, valued the property at \$30,000,000.

The Talbots have failed to pay the monthly mortgage payments for the last four months as they were faced with high medical bills, recently incurred, when Mr. Talbot had to seek emergency medical surgery overseas.

The Talbots show you the following advertisement that was published in the local daily paper of August 6, 2017:

“House at 14 Kendall Avenue, with registered title, for sale by public auction pursuant to Powers of Sale contained in a Mortgage. Property located in a desirable residential area. Auction Sale will be held on August 7, 2017, at the premises of auctioneers Finn & Tavis, 3 Belman Road.”

Mr and Mrs Talbot tell you that they saw the advertisement on the evening of August 6, 2017 and called the building society’s loans officer at 9:00 am on August 7, 2017. They were advised at that time that the property had been sold to one Marva Taitt for \$15,000,000 which sum represented the principal and interest due to the building society. The Talbots have since learnt that Marva Taitt is the sister-in- law of the building society’s general manager.

Mr and Mrs Talbot are shocked as to how this could happen to them and now seek your advice.

In a letter to the Talbots, advise them whether the building society has properly exercised its power of sale, outlining the basis for your advice and any recourse they may have in the circumstances.

QUESTION 3

Michael Bender is a property developer who conducts his business through his company MB PRO Limited. Michael is developing the Widcombe Estate into a shopping mall. Danielle has contracted to purchase one of the units. She intends to operate a pastry shop in the mall. Completion is scheduled for August 22, 2017, when a separate title for the unit will be handed over, in exchange for the balance of the purchase price.

Danielle has ordered and paid for the equipment she will need to operate her business, and expects to receive delivery of same shortly. She has also executed contracts of employment with persons to work as a chef and cashier in the business. They are expecting to commence working on August 27, 2017.

Michael has recently contacted Danielle, requesting that the completion date be extended to November 30, 2017. He tells her that construction has been delayed due to a number of labour disputes that have arisen on the project.

Danielle is quite upset as she has borrowed money to purchase the equipment and she needs the business to start generating revenue, as soon as possible.

Danielle has instructed you to immediately indicate to Michael that the transaction must be completed by September 22, 2017, failing which, she will pull out of the sale and sue the company to recover her deposit.

- (i) Advise Danielle as to whether you can proceed with her instructions, giving reasons.
 - (ii) Prepare any document you deem appropriate pursuant to your advice to Danielle above.
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QUESTION 4

Jane Hulse is the sole executrix under the will of her elder sister, Emma Moore. Emma devised to her only son Sean, her fee simple interest in a property known as Carlton Estate, comprising eight acres of prime residential land. Sean wishes to sell Carlton Estate to Prime Holdings Limited and has retained you to handle the sale on his behalf.

A perusal of the title for the property reveals as follows:

- (i) in 1978, Emma Moore and her husband, Henry, purchased Carlton Estate as joint tenants and are still on title as proprietors; and
- (ii) Carlton Estate was mortgaged in 2013 to Gold Bank Limited to secure the sum of \$1,000,000.

Jane advises you that:

- (a) Henry died in 2014;
- (b) Emma died in December, 2016; and
- (c) the sum of \$400,000 is still outstanding on the mortgage.

Advise Jane on the procedural steps required to complete the sale to Prime Holdings Limited. Your advice must refer to the documents required and their contents.

QUESTION 5

Betty Johnson is scheduled to meet with you to discuss your representing her in the purchase of an apartment in an existing condominium/strata development. The relevant approvals for the construction of the complex were all obtained, construction has been completed and the titles for all of the units have been issued.

Betty will need a mortgage to complete the sale. The property is to be sold semi-furnished. The furnishings will comprise 5% of the purchase price. Betty is hoping to be able to move in on the execution of the agreement, as she has recently received a notice to quit from her landlord. The notice expires at the end of August, 2017.

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

- (i) the inquiries and searches she should make as a preliminary step to entering into the contract;
- (ii) the general contract terms she should expect to see in the agreement for sale;
- (iii) any terms you would recommend be included in the agreement for sale; and
- (iv) the issues that are likely to arise in relation to living in an apartment complex as opposed to living in a “stand alone” dwelling house.

QUESTION 6

Norma Birch wishes to sell property registered in her name as sole proprietor of the fee simple interest. It is the property from which she once conducted a business in partnership with her estranged husband, Rupert.

The property is situated at 12 Midland Avenue in the jurisdiction.

Norma has petitioned for divorce and the matter is still before the court. She has been recently advised by the registrar that Rupert has lodged a caveat/caution against all dealings in relation to the property.

In light of the caveat/caution that has been lodged, advise Norma on:

- (i) the implications for her, as the registered proprietor, seeking to negotiate and enter into an agreement for sale of the property; and
- (ii) any procedural steps she would be required to take, identifying any document(s) that may be necessary as part of the process, and their contents.

QUESTION 7

Paula Lee and Maria Chin are the executors and trustees named in the will of Felicia Flemming who died leaving property known as Richfield Estate.

In her will Felicia made the following devise:

“All of my real estate at Richfield, I leave to my son Vernon for life, remainder to his two sons Tim and Marcus absolutely.”

Vernon, who is quite a spendthrift, is looking for an opportunity to sell the property as soon as possible, as it is located in a very upscale neighbourhood and should command a good price. Ken Gopaul, a property developer, and a friend of Vernon’s, has already indicated an interest in acquiring the property, should Vernon decide to sell.

The executors have expressed their concern that Vernon is being too hasty in seeking to dispose of the property. They are also concerned about the future of Tim and Marcus who are both teenagers.

Advise Paula and Maria on:

- (i) whether Vernon can proceed in the manner in which he is proposing and what considerations he needs to bear in mind; and
- (ii) the role to be played by them in their capacity as trustees.

QUESTION 8

Winston and Margaret own their matrimonial home at 6 Murray Lane in the jurisdiction as joint tenants. The property is unregistered land. They had acquired it in 2001 as a gift from Margaret's father, Mark Jones, when they got married.

On April 27, 2017, they agreed to sell the property to Sheldon Bravo. They received a deposit from Sheldon and gave him a receipt. Completion was expected to take place within four months.

On August 2, 2017, Winston and Margaret were involved in a tragic car accident. They were both seriously injured, and after being hospitalized, both eventually died from the injuries they received. Winston died on August 5, 2017 and Charmaine on August 6, 2017.

They both died testate, and Lynette Edwards, Winston's sister, was the sole executrix named in both of their Wills. Lynette comes to see you, having been shown a copy of the receipt by Sheldon, who has been pressing her for completion.

Advise Lynette on the procedural steps and the matters to be taken into account to complete the sale and give good title to Sheldon.

END OF PAPER