

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2018

CONVEYANCING AND REGISTRATION OF TITLE

(AUGUST , 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.
- (a) 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

Elizabeth, Edward and Meghan are the registered proprietors, as joint tenants, of a property at 15 Buckingham Avenue in the jurisdiction. The property is registered at Volume/Block 1000 Folio/Parcel 231. Elizabeth died in May 2004, and shortly thereafter, in October 2004, Meghan also died.

Both Elizabeth and Meghan died testate, and both have appointed their church sister, Diana, to be the executrix of their respective Wills.

Edward, who migrated to Australia and has lived there for many years, has paid little attention to the property as he had no plans to return to the jurisdiction.

Edward died two months ago, leaving all his estate to his wife, Camilla. His estate includes the Buckingham Avenue property, the title to which is still held in the names of the three joint tenants. Camilla is the sole executrix of Edward's Will, and she has already obtained a grant of probate out of the Supreme/High Court in the jurisdiction.

Camilla now seeks your advice as to how she should proceed to have title to the Buckingham Avenue property vested in her name.

Advise Camilla. Your advice must make reference to any document(s) required and their contents.

QUESTION 2

Kate and Alice Wickham are the registered proprietors, as joint tenants, of premises registered at Volume/Block 1999 Folio/Parcel 446 of the Register Book of Titles/Land Register.

The property is mortgaged to Cash Bank Limited. There is still an outstanding balance of \$2,500,000 under the mortgage.

Kate and Alice have entered into an agreement to sell the property to Evan Zinger for \$8,000,000. It is a cash sale, and Evan has indicated that he is anxious to complete the transaction.

Cash Bank Limited has advised that the Certificate of Title /Land Certificate has been lost in the mortgage department at its head office on Fleet Avenue. The Bank's standard practice is to keep the titles, which it holds as security for loans, in the vault at its head office at Fleet Avenue. The manager of the mortgage department recently conducted an inventory exercise, during which she removed all of the titles from the vault. In replacing them, she was unable to account for the said Certificate of Title/Land Certificate.

Advise Kate and Alice on the procedural steps that they would be required to take to complete the sale without the Certificate of Title/Land Certificate.

Your advice must make reference to any document(s) required (including correspondence with the Bank) and the contents of such document(s).

QUESTION 3

Jack Burnett has entered into an agreement to sell to his friend, Andy Coulton, his (Jack's) fee simple interest in a property on Goodwill Avenue in the jurisdiction. The property is registered at Volume/Block 1231 Folio/Parcel 409 of the Register Book of Titles/Land Register, in the names of Jack and his deceased sister, Jill, as joint tenants.

The agreement has been executed by both parties and is dated May 3, 2018. It provides for completion to take place within three months of the date of the agreement, that is, on or before August 3, 2018.

Although not specifically mentioned in the agreement, the parties understood that Jack planned to use the proceeds of sale to complete the purchase of another property. That transaction is scheduled for completion on or around the same date.

Special Condition 2 of the sale agreement requires Jack, to note Jill's death on the title for the property, prior to completion. The application to note Jill's death has already been submitted to the Registrar of Titles/Lands. When Jack last checked on the status of the application, he was advised by the Registrar that the application had been approved, and full processing and endorsement should be completed by today.

On July 15, 2018, Andy, through his attorney-at-law, Donald Ventour, wrote to Jack, advising that negotiations with his bank for a loan had not been successful, and he would require an extension of one month from the completion date, to finalise arrangements for a loan from another source. Jack was reluctant to grant an extension as he was concerned that it would jeopardize his ability to complete his own purchase. Due to his friendship with Andy, he, however, eventually agreed to a two-week extension.

Jack comes to see you as he is concerned as to whether Andy will indeed be in a position to complete on the extended date. He instructs you to immediately write to Andy's attorney-at-law, to advise that failure to complete on the extended date will result in his (Jack) withdrawing from the agreement and forfeiting the deposit.

- (i) Advise Jack of the circumstances in which you can proceed with his instructions.
- (ii) Prepare any document you deem appropriate pursuant to your advice to Jack above.

QUESTION 4

Patrick Birch mortgaged his property situated at 6 Port Street in the jurisdiction to Island National Bank. He operates a fruit processing plant and business out of a factory situated on the property.

Over the past year and a half, Patrick has experienced a downturn in his business, and the mortgage has not been paid for the last three consecutive months.

A few days ago, he received a telephone call from a friend, telling him that she saw an advertisement in the local newspaper that the property was being sold by Island National Bank for \$5,000,000, or nearest offer.

Patrick comes to see you and advises that he has had no notification from the Island National Bank that they intended to sell the property. He also tells you that six months ago, he obtained a valuation of the property for insurance purposes, and that valuation report put the replacement value of the property at \$12,000,000.

Prepare a letter to Patrick, advising him on the following:

- (i) the procedural steps that Island National Bank, as mortgagee, is required to take to properly exercise its power of sale, and the matters to be taken into account in doing so;
and
 - (ii) the options available to him in the circumstances.
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QUESTION 5

Hugh and Margo Jennings reside at 4 Hawthorne Avenue in the jurisdiction, the title to which is registered in their names as joint tenants of the fee simple interest. The property consists of a three-bedroom dwelling house on a half-acre lot, 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.”*

Similar restrictions appear on the titles for the other lots in the Hawthorne Avenue neighbourhood. On part of the land, Hugh and Margo want to build a block of apartments to rent, as part of their retirement plan. Several buildings on Hawthorne Avenue are either townhouses or apartment complexes, and this has been the case for upwards of ten years. They intend to apply to the court to have the restrictions on the title discharged/modified.

The Citizens Association for the Hawthorne Avenue neighbourhood, have recently learnt of Hugh and Margo’s plans for their property. Members of the Association come to see you on the matter. They tell you that they have serious concerns in relation to the proposed development. In their view, it will change the feel and character of the neighbourhood, virtually converting it into a concrete jungle. They intend to take whatever legal steps may be open to them, including proceeding to court, to object to this development. They want your advice on the validity of their concerns.

Write an opinion on:

- (i) whether their concerns are valid; and
- (ii) the likelihood of the court upholding their objections.

QUESTION 6

Bertram Spock and Anne Marie Picard have agreed in principle that Bertram will purchase from Anne Marie, the fee simple interest in an apartment owned by Anne Marie. The property is situated at Starz Terrace in the jurisdiction.

Bertram has called to make an appointment to see you, and in his conversation with you, has provided the following details:

1. He will need a mortgage of 70% of the purchase price to assist with the purchase of the property.
2. The property is being sold together with certain items of furniture and appliances.
3. He wishes to take possession immediately on the signing of the sale agreement.
4. He wants the transaction to proceed to completion without any delay, as his mortgage company is offering a reduced interest rate on all loans disbursed within the coming three months.

In preparation for your meeting with Bertram, prepare notes on the matters on which you consider it important to advise him, including the following:

- (i) the inquiries and searches he should make as a preliminary step to entering into the contract;
- (ii) the general contract terms he should expect to see in the agreement for sale, giving reasons; and
- (iii) any terms you would recommend be included in the agreement for sale, and the reasons for including them.

QUESTION 7

Meredith Bailey is the sole executrix and beneficiary under her grandfather's Will. The main asset in his estate consists of a three-acre lot of land, located in the coffee-growing district of Bluemount in the jurisdiction. She has obtained a grant of probate in the estate, and is registered on the title in her capacity as executrix of the estate.

She comes to see you and tells you the following:

1. She is a first year law student at the university in the jurisdiction.
2. She wants to sell the land and invest the proceeds of sale.
3. Her intention is to use the interest earned on the sum invested, to assist her in funding the cost of the tuition fees that will be required to allow her to complete her law degree.
4. She has engaged a real estate firm to find a purchaser for the land.
5. A recent search made by her at the Office of the Registrar of Titles/Lands, revealed that there is a caveat/caution registered against the title to the property. A perusal of the caveat/caution shows that it was lodged more than ten years ago, by a Clifton Beharry, alleging that he had an interest in the land, pursuant to a loan advanced by him to her grandfather.
6. She wants your advice on how she should proceed, in light of the caveat/caution that has been lodged.

Advise Meredith on:

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

QUESTION 8

By his Will, Ronald, now deceased, made the following provisions:

*“I appoint my wife Melania as executor. I appoint Jared and Yvonne my Trustees.
I devise my property at 10 Harmony Lane to my wife for life and on her death or
remarriage to my god-daughter Selena.”*

Melania is anxious to sell the Harmony Lane property because of all the memories of her husband associated with the property. She has engaged the services of a real estate firm to find a Purchaser for the premises. If, however, a sale does not materialize shortly, she intends to give the property to her grandson, Dale, who is getting married later this year.

Advise Melania on the following:

- (i) the procedural steps to be taken to pursue a sale of the property, including the matters to be taken into account in pursuing the sale; and
- (ii) the procedural steps to be followed if Melania wishes to transfer the property to Dale as a gift.

END OF PAPER