

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
SECOND YEAR EXAMINATIONS, 2016

CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 13, 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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## **QUESTION 1**

In May 2000, Barry Gibbs bought a three-bedroom house on Vegas Drive in the jurisdiction. The property is registered at Volume/Block 1111 Folio/Parcel 449 of the Register Book of Titles /Land Register. He obtained a mortgage loan from Gold Bank Limited to assist in the purchase, and a mortgage in favour of the Bank has been registered on the title for the property.

Barry married Betty Farmer two years later, in 2002.

Betty comes to see you and instructs you as follows:

- (i) Barry died unexpectedly on January 1, 2016;
- (ii) under the terms of his Will, she is the sole executrix and beneficiary of his estate and has recently obtained a grant of probate;
- (iii) the sum of one million dollars is still outstanding under the mortgage;
- (iv) Leo Masson is interested in purchasing the property from her, and she has entered into a written agreement to sell same to him, free of all encumbrances, for the sum of ten million dollars; and
- (v) he has already paid over the full purchase price to her.

Advise Betty on the procedural steps required to complete the sale to Leo. Your advice must refer to the documents required and their contents.

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## **QUESTION 2**

Daisy Robertson, lives in a townhouse which she inherited under the terms of her father's Will. Her father, Leonard Robertson died six months ago. The devise in the Will provided that Daisy was to own the entire interest in the property until her death and thereafter the property was to pass to her younger brother, Gerald.

Daisy wants to sell the property and use the proceeds of sale to contribute to the joint purchase of a property by herself and her good friend, Carla. They had been looking for some time now for premises, out of which they would be able to operate their information technology business.

Daisy tells you that she is entitled to the entire interest in the property and therefore she has the right to make any decision she wishes in relation to the house. With respect to Gerald, she is of the opinion that, as he is no longer a minor and is gainfully employed and financially independent, he is quite capable of taking care of himself, and what she proposes to do will not pose a problem for him.

Advise Daisy whether she can proceed with the sale on the basis she has outlined to you. Give reasons for your advice and outline any procedural steps you recommend that she take in the circumstances.

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### **QUESTION 3**

Celine has been operating a small catering business from her house located at 57 Clover Avenue for the past two and a half years. The business has over time outgrown the size of Celine's home kitchen. Celine is considering expanding the business by building a one-bedroom bungalow on the property, out of which she will operate her catering business.

The property in which she lives consists of a four-bedroom house on a half-acre lot. The title to the property is registered in Celine's name as sole proprietor.

The Clover Avenue area has over the years gradually developed into a mix of commercial and residential properties. However, the following restriction appears on each of the titles for the lots in the neighbourhood:

*"No building other than a private dwelling house with appropriate outbuildings shall be erected on the said land and no building erected on the said land shall be used for the*

*purposes of a shop and no trade or business whatsoever shall be carried on upon the said land or any part thereof.*

*The aforementioned restrictions shall run with the land.”*

Celine is negotiating a bank loan to assist with the construction of the bungalow. She tells you that the bank has indicated that her application would likely be given more favourable consideration without the restriction on the title. Someone has told her that it is possible to apply to the court to have the restrictions on the title discharged or modified.

Advise Celine on:

- (i) the procedural steps required to make such an application. You are to identify in your advice any documents required and summarize their contents; and
- (ii) the likelihood of success of her application to the court.

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#### **QUESTION 4**

William King and Thomas Middleton are the registered proprietors as joint tenants of a four-bedroom townhouse in a gated community in the Fairview area of the jurisdiction. Thomas has recently died and, under his Will, William has been appointed the sole executor and beneficiary of Thomas’s estate.

William has recently obtained a grant of probate in Thomas’s estate and he wants to have the title to the property registered in the joint names of himself and his wife, Katrina, as joint tenants.

William tells you that the land certificate/duplicate certificate of title has been destroyed. He had custody of the certificate and same was kept by him in one of the drawers in his desk in his study.

A few months ago, however, there had been a fire at his home, and a number of documents in the study suffered severe water damage. The information on the certificate was no longer legible and he disposed of it.

Advise William on the procedural steps that would be required to have the certificate replaced and the title registered in accordance with his instructions. Your advice must include identifying the documents required and their contents.

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### **QUESTION 5**

Howard and Cecile Gibson have for the past fifteen years run a very successful hardware business. The business is located at 3 Prince Avenue in the centre of the business district in a building owned by them as joint tenants.

In 2012, when the economy was booming, they decided to expand their operations and obtained a loan of 10 million dollars from Gold Building Society to fund this expansion. The loan was secured by a mortgage over the business premises.

Because of the downturn in the economy, the hardware's sales are down and this has adversely affected their cash flow position. As a result of the difficulties that they have been experiencing, they have not made the monthly payments due to the Society for six consecutive months. Over the period of this default, however, they have had discussions with the loans officer at the Society emphasizing their willingness to pay, but asking for just a little more time.

Howard and Cecile instruct you as follows:

- (i) they have just received a letter from the Society stating that in the exercise of its power of sale, the property has been sold by private treaty for 9 million dollars to First Class Developers Limited;

- (ii) they have learnt that First Class Developers Limited is a property development company and that the loans officer is a majority shareholder in the company; and
- (iii) the advertisement in the daily newspaper advertising the house for sale read as follows:

**“Public Auction to be held at No. 15 Belmont Place, St Andrew on Wednesday May 6, 2016 at 10:00am. Building situated at 3 Prince Avenue with registered title under mortgagee’s power of sale”**

They are quite shocked at the manner in which the Society has dealt with this matter.

In preparation for a meeting with Howard and Cecile:

- (i) prepare a checklist of the specific matters to be taken into account in order to determine whether the Society has acted properly in attempting to exercise its power of sale; and
- (ii) advise as to any recourse they may have against the Society in the circumstances.

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## **QUESTION 6**

You have been asked to meet with Paula, a first-time purchaser, who is purchasing a studio apartment in an existing development, the title to which is registered.

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

- (i) the usual preliminary searches and enquiries;
- (ii) the general contract terms she should expect to see in the agreement for sale; and
- (iii) any restrictions and obligations that are likely to arise in relation to living in an apartment complex.

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## **QUESTION 7**

Sasha Ritch has written to you from the United Kingdom (UK) where she resides. She has lived and worked in the UK for over thirty years. Her plan has always been to return to the jurisdiction when she retires.

On a visit to the island in 2015, she entered into a contract with the National Housing Agency (NHA) to purchase a half-acre parcel of land located at Botany Heights in the St Thomas district of the jurisdiction. This development by the NHA was an initiative on their part, aimed at targeting nationals from the jurisdiction who live abroad. The land is already registered and completion under the contract is to take place when subdivision approval has been obtained by the NHA.

The contracts were executed by both parties and a deposit of 10% was made on signing. Subsequent to her return to the UK, two interim payments, amounting in total to 55% of the purchase price, were wired by Sasha to the attorneys-at-law acting for the NHA.

While perusing the jurisdiction's weekly newspaper online a week ago, Sasha was shocked to read that the NHA had entered into a joint venture agreement, with a large foreign investor, for the development of the entire Botany Heights lands in St Thomas. She called a friend who lives in the jurisdiction and asked him to check on the details of the story. He has confirmed that the deal is in place and that it does indeed relate to the very property, part of which she has contracted to purchase.

Sasha wants to know if there are any steps she could take to protect her interest until the matter is sorted out.

Advise Sasha on:

- (i) the procedural steps she can take to protect her interest, as an immediate first step before proceeding to court, explaining the legal basis for your advice; and

- (ii) the procedural steps that may be taken by the relevant persons/entities in responding to the action you have recommended to Sasha in (i) above.
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### **QUESTION 8**

Deidre is seeking your advice as to how she can resolve the following matter with Terry. Deidre's instructions are that in January 2016, she orally agreed to sell Terry the fee simple interest in one acre of her three-acre property, located in the Springfield area of the jurisdiction. Deidre says Terry confirmed the arrangement in an email to her in late January 2016.

Deidre tells you that she subsequently received a cheque from Terry for \$625,000 with a note which stated **"I have enclosed, as agreed, a part payment on the land deal. You will get the balance in exchange for title at the appropriate time"**.

Deidre responded to Terry a few days later by email stating **"Thanks Terry for your note and enclosure. We will be in touch"**.

Deidre further tells you that in March 2016, she had the area of land to be sold surveyed and she allowed Terry to take possession of that land on March 16, 2016.

Deidre has applied for subdivision of the land, so that a separate title can be issued to Terry.

Deidre received a pre-checked survey plan from the planning authorities in April, 2016 and is now demanding that Terry pay over the balance due. She is concerned as she has recently received a telephone call from Terry, asking for an extension of time to September 2016 to complete the transaction. He has not given any details as to the reason for his need for an extension of time, but he has indicated to her, that he may have to negotiate a loan to assist with the payment of the balance.



Deidre has received information from her friend at the Land Registry/National Land Agency that the new title is to be issued in a few days. She is requesting that you write to Terry, asking that he pay over the balance immediately. She also instructs you to advise him that if he fails to pay, she will sell the land to someone else, and hold onto the money she has received from him (Terry) to cover his use of the property from the date he entered into possession to the present.

Deidre tells you that, in any event, she is only trying to be patient with Terry as, in her opinion, there is no agreement for sale because she never signed any document agreeing to sell the land to him.

Advise Deidre on the following:

- (i) the nature of the transaction between Terry and herself;
- (ii) whether you can accede to her instructions to write to Terry in the terms she has requested; and
- (iii) the procedural steps that must be taken to give effect to her request for the balance of the purchase money from Terry.

Your advice must make reference to any documents you deem necessary and the information required to complete them.

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**END OF PAPER**