

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2017

CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 12, 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

Warren Barrett and Paul Gates are the registered proprietors as joint tenants, of the fee simple interest in a vacant lot of land, situated in the centre of the business district in the jurisdiction. The property is registered at Volume/Block 1111 Folio/Parcel 944 of the Register Book of Titles/Land Register. Warren and Paul had made plans to pool their resources and build an office complex on the property, with the intention of selling units to prospective purchasers.

Three months ago, Warren fell ill and died. Paul has decided to sell the property as he does not have the financial resources required to fund such a development on his own. He listed the property with a real estate agency. They have recently advised him of an offer received, from a wealthy businessman in the jurisdiction, which he has accepted.

Paul now comes to see you and instructs you as follows:

- (a) In 2011 he and Warren applied for and obtained a loan from Reliable Bank Limited. The loan was secured by a mortgage of the property in favour of the Bank. The Duplicate Certificate of Title/Land Certificate was handed over to the Bank for the endorsement of the mortgage thereon.
- (b) The Bank has advised Paul that they recently relocated their offices from Commercial Boulevard to Summit Row, and in the process of so doing, a number of important documents were misplaced. To date, none of these documents has been found. The Duplicate Certificate of Title/Land Certificate for the property was one of the documents that was misplaced and cannot be located.

Advise Paul of the procedural steps he would be required to take to complete the sale. Your advice must make reference to any document(s) required and the information required to complete them.

QUESTION 2

In March 2017, Carla Mendes orally agreed to sell to Adam Mason, for the sum of \$3,000,000, her fee simple interest in property situated at 5 Leeson Avenue in the jurisdiction. The property is registered at Volume/Parcel 110 Folio/Parcel 21 of the Register Book of Titles/Land Register. Adam confirmed the arrangement in a letter to Carla. In that letter he enclosed a cheque for \$300,000 payable to Carla. The letter indicated that the payment represented “part payment” on the transaction. In the letter he undertook to pay the balance on the agreed day for completion which was May 4, 2017 in exchange for title to the land. Carla sent Adam a receipt for the payment made and then let him into possession of the property.

In early May, Adam tried emailing and calling Carla, to arrange a time and place at which they could meet, to exchange the balance of the purchase price for the title to the property. Carla has not responded to any of his emails. Neither has she returned any of his calls.

Sheldon, a friend of Adam, informs Adam that he has heard that Carla is in the process of selling the property to a wealthy businessman for a “fantastic price”.

Adam is very upset and comes to seek your assistance with regard to instituting legal proceedings against Carla. He wants to know if there are any steps he can take to protect his interest until the court matter is sorted out.

Advise Adam on:

- (i) the procedural steps he can take to protect his interest before proceeding to court. Your advice must make reference to any document(s) required and the contents thereof; and
- (ii) the procedural steps that may be taken by the relevant persons/entities in responding to the action you have recommended to Adam in (i) above.

QUESTION 3

By Agreement for Sale dated March 2, 2017, Katrina Salmon, a computer technician, agreed to sell to Nadia Bent for the price of \$30,000,000, all her fee simple interest in property registered at Volume/Block 1333 Folio/Parcel 644 of the Register Book of Titles/Land Register. Nadia made an initial payment of \$3,350,000 when she signed the contract.

Under the agreement, completion is set for May 31, 2017 and no mortgage financing is contemplated.

On May 10, 2017, Nadia called Katrina to advise her that she would not be in a position to complete on the agreed date because she, Nadia, was still awaiting money from the sale of her house, to settle the balance purchase price due to Katrina. The following day, Nadia's attorney-at-law wrote to Katrina advising that Nadia would require an extension of two months to complete.

Katrina is livid at this turn of events. She says that in the preliminary discussions held with Nadia, in the course of negotiating the sale, Nadia had mentioned that she had readily available funds with which to purchase the property. It was for this reason that Katrina had accepted Nadia's offer, ahead of the other offers to purchase the property that she had received.

Katrina has instructed you to advise Nadia's attorney-at-law that no extension of time will be given, and that if Nadia fails to complete on the agreed date, she (Katrina) will withdraw from the contract and forfeit the money she has received.

- (i) Advise Katrina as to whether you can proceed with her instructions, giving reasons.
- (ii) Prepare an appropriate response to be sent to Nadia having regard to your advice in (i).

QUESTION 4

In December 2015, Alton and Cherrie mortgaged their dwelling house to Island Spice Bank Limited for \$20,000,000. Alton, a real estate developer, has been facing financial difficulty for some time now and the mortgage has not been paid for at least six months. They have met with the loans manager on a number of occasions over the last five months, but none of the proposals put forward by Alton was acceptable to the bank. They have been advised by the bank that it intends to exercise its power of sale.

A recent valuation obtained by Alton valued the property at \$35,000,000. The mortgage debt, with interest to date, amounts to \$23,000,000. Alton and Cherrie intend to closely monitor the sale by the bank, in an attempt to ensure that a surplus is realized. They are not clear as to the responsibilities resting on the bank when exercising its power of sale and they now ask that you provide them with:

- (i) an outline of the procedural steps the bank should take to properly exercise its power of sale and the specific matters that the bank should take into account in so doing; and
- (ii) an explanation of any option open to them, as mortgagors, should they wish to challenge the exercise by the bank of its power of sale.

QUESTION 5

Samuel Baptista is the sole executor and beneficiary under the Will of Phillip Boland, now deceased. "Top Home", a six-bedroom executive townhouse, forms part of the estate. Samuel has recently obtained a Grant of Probate. He wants to have title to "Top Home" registered in the joint names of himself, his wife Coleen and their 4-year-old daughter, Sherrone.

Advise Samuel on the following:

- (i) any implications which might arise from carrying out his instructions; and

- (ii) the procedural steps that he would be required to take to have the title registered in accordance with his instructions. Your advice must make reference to any document(s) required and their contents.
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QUESTION 6

Marva Barker lives in the district of Couva in the jurisdiction. She is very involved in social work in the community and is the Chairperson of the Couva Citizens Action Committee.

Most of the residents in the district live on unregistered land which they have occupied for many years. The Committee has organized a meeting of the citizens in the community to discuss with them the benefits of obtaining registered title to land they occupy.

Marva has asked you to make a presentation at the meeting on the following:

- (i) the benefits of obtaining registered title to land; and
- (ii) the procedural steps that the residents, who claim that they own the fee simple interest in the land they occupy, would be required to follow to obtain registered title. Your answer should include reference to the documents required and their contents.

Prepare the presentation outlining to the residents the issues at (i) and (ii) above.

QUESTION 7

Glenda Green, a businesswoman, is the registered proprietor of an estate in fee simple of property, known as 4 Paris Boulevard in the jurisdiction, registered at Volume/Block 1646 Folio/Parcel 484 of the Register Book of Titles/Land Register.

The property is part of an upper middle income residential subdivision known as Fairways. The lots are approximately half-acre in size and the titles for all of the lots are subject to the following restrictions:

- “ 1. The said land shall not be further subdivided.*
- 2. No building other than a private dwelling house with appropriate outbuildings thereto shall be erected on the said land.”*

Glenda wants to develop her property by erecting a townhouse scheme with a view to selling the townhouses to prospective purchasers. She does not wish to embark on the project until the issue of the restrictions is addressed. She comes to see you for advice in relation to how she should proceed. She tells you that although Paris Boulevard has remained largely residential, several of the houses in the areas around Paris Boulevard have, over the years, been converted into townhouses or apartments.

Advise Glenda on the following:

- (i) the procedural steps she must take to modify/discharge the restrictions. Your advice must include any document(s) required and the contents of such documents; and
 - (ii) the likelihood of success in modifying/discharging the restrictions.
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QUESTION 8

Meghan Miller is purchasing a one-bedroom dwelling house in a newly established housing development in the district of Upton in the jurisdiction. Meghan has recently qualified as a medical doctor and is considering adding a room to the house, which could serve as an office, out of which she would operate her medical practice. She is anxious for the transaction to be completed as she presently lives in cramped accommodation with her two sisters. She will need mortgage financing to complete the sale.

Meghan has asked you to represent her in the transaction. She has an appointment to see you next week to discuss the matter. She has advised that the law firm, Nathan Roberts and

Markle, is acting for the Vendor, and will send over to you shortly, a draft of the sale agreement for you to review on her behalf.

In anticipation of your meeting with Meghan, prepare notes on the following:

- (i) pre-contract considerations;
- (ii) the general terms she should expect to see in the agreement;
- (iii) any special conditions you would recommend be inserted into the agreement;
and
- (iv) any further information/instructions you will need from her to assist your review of the agreement.

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