

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATION 2023
CONVEYANCING AND REGISTRATION OF TITLE**

(FRIDAY, MAY 5, 2023)

Instructions to Students

- (a) Time: **3½ hours**
- (b) Answer **ALL** questions.
- (c) In answering any question, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **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.
- (f) Calculators may be used and are provided.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Franklyn and his mother, Mary Jones reside at 4 Posh Avenue, part of the Platinum Circle subdivision in the jurisdiction, the title to which is registered in their names as joint tenants. The property consists of a five-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.”*

The original subdivision consisted of 60 lots with each lot comprising approximately half-an-acre. Similar restrictions appear on the titles for the other lots in the subdivision. The lots in the subdivision are concentrated along four roadways (Posh Avenue, Queens Crescent, Park Avenue and Royal Close) all leading off Golden Road, which is the main road in the area. There are several lots in the subdivision, mainly along Park Avenue, Royal Close and Queens Crescent, where the original single-family residences on the lots have been converted into townhouse and apartment complexes, and this has been the trend for upwards of ten years. This general tendency towards multi-dwelling complexes is, however, noticeably less prevalent along Posh Avenue.

Franklyn has found it increasingly difficult to maintain the property at 4 Posh Avenue as property taxes and home security costs have soared, and Mary was recently diagnosed with Alzheimer’s disease. He is her sole caregiver. On a part of the land, Franklyn wants to build a block of luxury apartments/condominiums for sale and rental, as part of his retirement plan and to fund the treatment of his mother’s long-term medical expenses.

The Citizens Association for the Posh Avenue neighbourhood, whose membership comprises mostly retired registered proprietors, has been constant in its efforts to preserve the quiet, exclusive family-oriented neighbourhood and has recently learnt of Franklyn and Mary’s plans for their property. The Association has informed them that it has serious concerns in relation to the proposed development as it will render the neighbourhood “a dense concrete jungle”. Franklyn and Mary are nevertheless undeterred by “these busybodies” and have sought your advice on:

- (i) their likelihood of success in modifying/discharging the restrictions; and
- (ii) the procedural steps to be taken to modify/discharge the restrictions.

Advise Franklyn and Mary.

Your advice must include any document(s) required and the contents of such document(s).

QUESTION 2

In September 2018 Jonathon Smart, a total travel experience consultant, obtained a mortgage loan of \$40,000,000 from Provincial Bank Limited (Bank) to renovate his four-bedroom, three-and-a-half-bathroom house on a half-acre of land located in a residential area in the jurisdiction. The mortgage was registered on Certificate of Title/Land Certificate registered at Volume/Block 1234 Folio/Parcel 56 of the Register Book of Titles/Land Register in the name of Jonathon Smart.

As of January 2020, the travel industry was severely impacted by the COVID-19 pandemic and Jonathon was forced to pivot and explore new avenues to earn an income. He partnered with a real estate developer, Bailout Limited, and received planning permission to convert the four-bedroom house into an apartment/condominium complex of 12 two-bedroom luxury apartments boasting spa-like bathrooms, a fitness gym, a walking trail and an infinity pool. The construction of the apartments was practically completed in June 2022 with an anticipated delivery date of March 2023.

During this time, Jonathon's monthly mortgage payments had fallen into arrears but he was paying intermittently and had visited the Bank on several occasions sharing his development plans for the property. The Bank requested copies of the planning permission for its records. He also requested a moratorium on the mortgage payments, assuring the Bank that the sale of two of the apartments would clear the mortgage arrears. The bank manager assured him that he understood his plight as his case was not unusual given the passage of the pandemic.

As of September 2022, Jonathon had not made the mortgage payments due to the Bank for the last six months, and the debt now stands at \$42,000,000. He instructs you as follows:

- (i) His property was included in a list of properties published in a local newspaper about two weeks ago, advertising a sale by public auction by the Bank, acting under its power of sale.
- (ii) The advertisement read as follows:

“... unfinished building on corner lot in residential area for sale pursuant to Powers of Sale contained in a Mortgage. Property registered at Volume/Block 1234 Folio/Parcel 56. Public Auction to be held at the offices of Cent Management Auctioneers, on Friday, September 3, 2022.”
- (iii) He was not notified that the property was going to be sold by the Bank.
- (iv) On seeing the advertisement, he visited the bank manager and reiterated his request that the monthly mortgage payment be deferred for a few months, as the apartments were almost finished and were about to be advertised for sale.
- (v) The bank manager wrote to him, rejecting his request on the ground that it had already sold the property to Kenroy Crooks by public auction at a sale price of \$42,000,000 representing outstanding payments, interest, and late charges.
- (vi) He is outraged as he recently obtained a valuation report from a reputable valuer assessing the market value for the complex at \$360,000,000.
- (vii) He has heard that Kenroy Crooks and the manager of the Bank are the shareholders and directors in a company, Opulent Homes Limited, which is involved in real estate development.

Prepare a letter to Jonathon advising him on the following:

- (a) the specific matters to be considered to ascertain whether the Bank acted properly in the exercise of its power of sale; and
- (b) the options that may be open to him in the circumstances.

QUESTION 3

Misha Khan is the registered proprietor of a three-bedroom house situated on Empire Avenue in the jurisdiction. The property is comprised in Certificate of Title/Land Certificate registered at Volume/Block 3456 Folio/Parcel 756 of the Register Book of Titles/Land Register. Misha has entered negotiations with Sharon Williams in relation to the sale of the property to her.

Misha has visited your office and has provided you with the following details:

- (i) Sharon will need a mortgage loan of approximately 80% of the purchase price of \$50,000,000, being \$40,000,000, to assist with the purchase of the property.
- (ii) There is a tenant presently occupying the house, who has promised to vacate same prior to completion of the sale.
- (iii) Sharon wishes to take possession immediately on the signing of the sale agreement, as her landlord intends to raise her rent and she wishes to avoid any additional costs at this time.
- (iv) Misha has, at Sharon's request, included the furniture and appliances in the house, as part of the sale.
- (v) Once the agreement is signed, Misha does not intend to entertain any delays in completion, as she urgently requires the proceeds of sale to complete the purchase of a townhouse and she has already signed the sale agreement.

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

- (a) the preliminary searches and pre-contract inquiries that should be undertaken;
- (b) the general contract terms she should expect to see in the agreement; and
- (c) any special conditions you recommend be included in the agreement, outlining their contents, giving reasons.

END OF PAPER