

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS 2023

CONVEYANCING AND REGISTRATION OF TITLE

(WEDNESDAY, AUGUST 02, 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

Berry Brooks, also known as “DJ Driver”, is a well-known artiste in the music industry in the jurisdiction. Berry is registered on the title as the sole proprietor of the fee simple interest in property located at 3 Lower Terrace in the jurisdiction.

Lower Terrace is part of a residential neighbourhood known as Cashew Park. Over the years, some of the houses in the neighbourhood have been converted into professional offices, a commercial plaza and a church.

The Certificate of Title /Land Certificate shows *inter alia* the following restrictions:

- “1. No building other than a private dwelling house with appropriate outbuildings thereto shall be erected on the said land.*
- 2. No trade or business whatsoever shall be carried on upon the said land or any part thereof.”*

Berry has, over the past year, hosted “Buss a Artist Night” events on the last Saturday of each month at 3 Lower Terrace. At these events, he allows aspiring disc jockeys to perform on the lawns of the property. Persons in the district are allowed to attend to enjoy the music.

Mary and Marsha Nunn are the registered proprietors of the premises adjacent to 3 Lower Terrace and have similar restrictive covenants on their title. They have experienced with horror the noise from the music, the increase in the vehicular traffic, the smoking of ganja and generally the “undesirable characters” the events attract. They have called the police on several occasions.

Berry now wants to renovate the house at 3 Lower Terrace to facilitate a music recording studio where he would develop and promote the talent he discovered from the “Buss a Artist Night” events, and to operate a ganja café and herb house. He has obtained a licence from the Cannabis Licensing Authority in the jurisdiction and has approached Progressive Bank Limited to get financing for this commercial venture. On reviewing his application, the bank advised him of the

restrictions on the title and instructed him to seek the services of an attorney-at-law. Berry has visited your office seeking advice on the implications of the restrictive covenants on title.

Advise Berry on:

- (i) the nature of the application he would be required to make to permit him to use the premises as a music recording studio, including the document(s) required and the contents of such document(s); and
 - (ii) the likelihood of success of such an application.
-

QUESTION 2

The following notes have been passed to you by the partner with whom you work.

“Please prepare for an interview with the clients Jack and Jill Hill. They are requesting our advice on the following purchase:

- (i) *Vendor: Premium Homes Development Company Limited*
- (ii) *Purchasers: Jack Hill and Jill Hill*
- (iii) *Property: Three-bedroom unit in a complex registered at Certificate of Title/Land Certificate registered at Volume/ Block 1425 Folio/Parcel 617 - client believes that it is a strata/condominium complex of 15 units*
- (iv) *Purchase Price: \$40,000,000 – a portion to be paid on signing of the agreement for sale*
- (v) *Purchaser needs a mortgage of 70% to complete the sale. Purchaser is now in rented premises and wishes to move in on signing.”*

Carefully considering your role as Jack and Jill’s attorney-at-law, with responsibility for perusing a draft agreement for sale, advise on:

- (i) the inquiries and searches the purchasers should make as a preliminary step to entering into the contract to purchase the strata/condominium unit;
- (ii) the general contract terms they should expect to see in the agreement for sale;

- (iii) any special terms and conditions you would recommend be included; and
 - (iv) the content of such special terms/conditions and the reasons for including them.
-

QUESTION 3

Shawna and her husband, Devon, have for the past 10 years run a very successful car-rental business.

In 2015, they obtained a loan of \$16,000,000 from the First Citizens Building Society (the Building Society) to assist with the expansion of the business. The loan was secured by a property owned jointly by the couple, located at 52 Westgate Heights, and comprised in Certificate of Title/Land Certificate registered at Volume/ Block 725 Folio/Parcel 67 of the Register Book of Titles/Land Register, which is in an upscale residential neighbourhood. The property comprises a three-bedroom executive-type dwelling house, on two acres of land, with a large pool, along with tennis and squash courts situated thereon.

Over the past year, business has slowed down significantly as a result of the global economic crisis. As a result of the difficulties they have been experiencing, Shawna and Devon have not made the monthly payments due to the Building Society for four consecutive months.

Shawna and Devon tell you that they are quite upset and embarrassed, because the property was included in a list of properties published in a local newspaper, about two weeks ago, advertising a public auction sale by the Building Society acting under its power of sale. They mention to you that the advertisement read as follows:

*“Dwelling house for sale pursuant to power of sale contained in a mortgage.
Property registered at Certificate of Title/Land Certificate registered at
Volume/Block 725 Folio/Parcel 67. Public auction to be held at the offices of
DCP Auctioneers, 42 Winchester Road on January 15, 2023...”*

They have said that they were never told by the Building Society that the property was going to be sold.

They further tell you that, having seen the advertisement, they called immediately to make an appointment with the Building Society's manager, Peter Rascal, but without success. Thereafter, they forwarded to him, in writing, a proposal for reduced monthly payments towards the loan for a few months. They received a response rejecting their proposal on the ground that the Building Society had already sold the property to John Barnes by public auction at a sale price of \$14,000,000. A recent valuation shows that the property has a market value of \$40,000,000. Devon tells you that he understands that John Barnes is a business partner of Peter Rascal.

In preparation for a meeting with Devon and Shawna, prepare:

- (i) a checklist of the specific matters to be taken into account in order to determine whether the Building Society has acted properly in the exercise of its power of sale; and
- (ii) an outline of the options that may be open to Devon and Shawna.

END OF PAPER