

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATION 2024
CONVEYANCING AND REGISTRATION OF TITLE

(FRIDAY, MAY 10, 2024)

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

You are an associate in the law firm Johnson, King & Somers. Mainland Capital Trust Company Limited (the Company) is a major client of the firm, and your supervising attorney-at-law, John King, has passed to you a file in respect of which the Company is involved and needs legal advice. He wants you to assume responsibility for the file and provide the required legal advice to Mrs Jean Lee, Director and General Manager of the Company.

On May 8, 2024, Mrs Lee instructs you as set out below.

- (a) The Company is the sole named executor under the Will of its customer, hotel mogul William “Bill” Shields, who died on August 6, 2022. Mrs Lee further instructs you that the Company obtained a Grant of Probate on August 2, 2023, but no further steps have been taken.
- (b) One of the properties is a luxury villa registered at Volume/Block 1789 Folio /Parcel 212 of the Register Book of Titles/Land Register. The Certificate of Title/Land Certificate for the villa was kept in a vault on the first floor of the Company’s head office situated at Broad Street in the jurisdiction.
- (c) Mrs Lee further tells you that the Company, in pursuance of the administration of the estate, entered into an agreement for sale, dated September 1, 2023, with Paradise Isle Limited (Purchaser) for the said villa, at a sale price of US\$2.5M. The Purchaser is to make an initial payment of US\$500,000 on exchange of contracts. It was a term of the contract that completion would be on or before March 1, 2024, with balance purchase price of US\$2M payable in exchange for Certificate of Title/Land Certificate registered in the name of the Purchaser.
- (d) On February 15, 2024, the Purchaser wrote to the Company seeking an extension of time to complete, as it was experiencing delays with its overseas financiers. The Company agreed to the extension in writing and the new completion date was set and agreed to by the parties for March 31, 2024.

- (e) The extended date for completion has passed and to date the Purchaser has not contacted the Company in relation to the payment of the balance purchase price. Mrs Lee is incensed, as estate funds were used to effect repairs to the villa to attract a higher sale price. She has since learnt that the Purchaser is experiencing financial difficulties and may not be in a position to complete the sale. She does not intend to grant any further extension of time. She has asked you to write to the Purchaser immediately, advising that the Company is no longer interested in completing the sale, that it will keep the payment of US\$500,000 and will find another Purchaser.
- (f) On March 15, 2024, whilst the Records and Archives Manager, Selma Grey, was conducting an inventory at the Company's head office, a fire broke out, and the vault where Certificates of Title/Land Certificates were kept, was open at the time of the fire and all the contents of the vault were destroyed.

You are required to prepare a letter to Jean Lee advising her on the following:

- (i) whether the Company can cancel the sale, giving reasons; and
- (ii) the procedural steps to be taken to put the Company in a position to complete the sale. Your advice must also indicate the document(s) required, and the contents thereof. You are not required to indicate or explain the contents of a sale agreement.
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QUESTION 2

In 2010, Leslie Gogetter, a building contractor, inherited four acres of registered land in the upscale area of Pompadour Heights (the property) in the jurisdiction. Leslie sought and obtained planning permission to erect a complex comprising six one-bedroom and six super studio apartments/condominiums with attendant amenities, as he wanted to tap into the lucrative short-stay property market.

In 2012, he obtained a loan of US\$250,000 from Enterprise Bank Limited, which was secured by a mortgage registered on title, and proceeded to construct the apartments/condominiums. Upon

completion in 2014, Leslie operated six of the apartments/condominiums as AirS&S and the remaining six apartments/condominiums were rented on a longer-term basis. The complex was fully tenanted and the rental income from the complex allowed Leslie to consistently pay the mortgage and maintain the complex.

Since 2022, rental income has declined, due mainly to the saturation and seasonal nature of the short-stay property market. Additionally, Leslie's longer-term tenants complained bitterly about the steady influx of new people to the complex, loud and disruptive guests, lack of privacy, breakdown in security and increase in traffic. Several tenants terminated their tenancies, and the turnover of the longer-term tenancies remains high. Leslie was also unable to maintain the complex and as a result it has fallen into a state of disrepair.

Leslie has intermittently paid the monthly mortgage instalments for the past two years, and has failed to make mortgage payments for the last five consecutive months. Six months ago, he secured a personal loan from his father-in-law, Basil, to effect repairs to the complex and has rebranded the complex to attract executive rentals to expatriates.

Leslie visits your law office and instructs you as set out below.

- (a) On February 7, 2024, his wife Maria forwarded to him an advertisement of the property in the local newspaper which read as follows:

Fixer upper studio apartment/condominium complex for sale pursuant to Powers of Sale contained in a Mortgage. Property registered at Certificate of Title/ Land Certificate Volume/Block 799 Folio/Parcel 546. Public Auction to be held at the offices of CD and Sons Auctioneers, on Thursday, February 1, 2024.

- (b) He was shocked by this development as, over the period of default, he has had discussions with the bank manager, asking for a little more time, emphasizing his willingness to pay, once the repairs to the complex were completed and the complex was sold.
- (c) Upon seeing the advertisement, he immediately visited the bank and sought an extension of time of 60 days, to pay the arrears. He informed the bank manager that he has now

secured a purchaser, Michael Tulley, for the complex and was in receipt of a current market valuation for the complex of US\$1.5M.

- (d) The bank flatly refused his request for an extension of time on the grounds that the property was sold at public auction to Elite Properties Limited at a sale price of US\$400,000, representing the principal sum, interest and bank charges.
- (e) The bank never told him that the property was going to be sold.
- (f) He has been reliably informed that the Bank has since entered into a joint venture with Elite Properties Limited, which is involved in real estate development.

You are required to prepare an opinion to your managing partner setting out the following :

- (i) the specific matters to be taken into account in order to determine whether the Bank has acted properly in exercising its power of sale; and
- (ii) the legal recourse, if any, that may be available to Leslie in the circumstances.

QUESTION 3

Jonathon Parks is the registered proprietor of two half-acre sized lots in an exclusive upper-middle-class residential subdivision known as “Regency Park”, developed in the early 1990s. The subdivision is adjacent to a golf course and comprises approximately 40 similarly-sized lots. The following restrictions appear on the Certificates of Title/Land Certificates for all the lots in the subdivision:

- 1. The said land shall not be subdivided.*
- 2. No building other than a private dwelling house shall be erected on the said land.*

Mr Parks constructed a well-appointed five-bedroom house with a swimming pool and tennis court on one of his lots, which is situated on Baltimore Avenue which ends in a cul-de-sac. The

other lot which is adjacent to his house is vacant, landscaped and tastefully fenced. Several properties in the subdivision over the years, have been converted into strata/condominium lots. Baltimore Avenue, however, largely boasts hacienda-style houses with views of the lush green expanse of the golf course.

Mr Parks has been approached by Michael Opportune, a real estate developer in the jurisdiction, who wants to enter a joint venture arrangement with him to construct an upscale strata/condominium complex, comprising 40 three-bedroom units with the usual amenities on his vacant lot.

Mr Parks is amenable to this proposal as his vacant lot would constitute his equity in the development and on completion of the complex, he would retain two units. Mr Parks has obtained building permission from the relevant planning authorities in the jurisdiction on condition that the restrictions on the Certificate of Title/Land Certificate be dealt with. Mr Parks is also the President of the Regency Park Homeowners' Association. He convened a public meeting with the residents of the neighbourhood. He reassured them that the exclusive nature of the project would ensure that the general look and character of their neighbourhood would remain unaffected, and in fact, was very likely to result in their properties appreciating in value.

There was mixed feedback on the project as some residents were in favour, so long as the general look and character of the neighbourhood remain unaffected. Two homeowners in particular, Carmen Noseworthy, Manager of the Regency Park Golf Club and an immediate neighbour of Mr Parks, and John Astor, a retired shipping magnate, were unconvinced and believed that the development would lower property values, increase the number of homeowners and lead to an influx of persons who were *nouveau riche*. Mrs Noseworthy and Mr Astor made clear their intention to vociferously object to any kind of incursion in their neighbourhood. Additionally, Mr Opportune in negotiating financing for the project was told by the bank that his application would likely be given more favourable consideration without the restrictions on the title. Mr Parks has come to you seeking advice on how to proceed.

You are required to prepare an opinion to your managing partner setting out:

- (i) the procedural steps Jonathan would be required to take to modify/discharge the restrictions on the title in light of the development plans for the property. Your advice must indicate document(s) required, and the contents of such document(s); and
- (ii) the likelihood of success were Jonathan to try to modify/discharge the restrictions from the Certificate of Title/Land Certificate.

END OF PAPER