

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS, 2013

CONVEYANCING AND REGISTRATION OF TITLES

(FRIDAY, AUGUST 9, 2013)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Bettina is registered on title as the sole proprietor of the fee simple interest in a property on which there is a three-bedroom dwelling house. For the past twelve years this was the matrimonial home for Bettina and her now estranged husband Rudolph.

Rudolph has recently moved out of the house and has filed for a divorce. He is also seeking a declaration that he owns a half share in the property because over the years he has invested millions of dollars in upgrading the house to the value it is today. He also tells you that he was tricked into allowing Bettina to be registered as the sole proprietor because she had said that they would encounter greater difficulty getting a mortgage with his name on the title as he was self-employed at the time. However, his investments in the improvement of the property were always with the understanding that the property belonged to them as a couple.

Rudolph is concerned that the divorce proceedings will take some time to complete. He is therefore seeking your advice on the steps he can take to ensure that his interest in the property is not compromised in the meantime. In particular he would like to know how he would be able to monitor any dealings that Bettina may make in respect of the property.

Advise Rudolph. Your advice must include identifying any document(s) required and the contents of each.

QUESTION 2

Jessica is the sole executrix and beneficiary of a fee simple interest in land under her father's Will. Jessica has already been granted Probate of the Will and would now like to have her two adult children, Jonathan and Julia, on title as tenants in common with her.

Advise Jessica on the procedural steps she would be required to take to have the fee simple interest in the land vested as she wishes. Your advice must include identifying the documents required and their contents.

QUESTION 3

Having entered into an enforceable agreement for sale, the purchaser became aware for the first time that:

- (a) the roof of the house is termite-infested and is on the verge of collapse;
- (b) there is a restrictive covenant to the effect that the building shall be used only as a single-family dwelling house. The purchaser had hoped to convert it into flats for rental to tourists;
- (c) the set-back of the house from the road is in breach of local regulations, in terms of the distance from the boundary line; and

- (d) there is a pending action in court by the vendor's neighbour against the vendor in respect of the location of the boundary, which is likely to be resolved in favour of the neighbour.

The purchaser wishes to rescind the contract and seeks your advice.

Advise him on each of the above concerns and whether he is able to rescind the contract.

QUESTION 4

The following notes have been passed to you by the partner with whom you work in the firm, which you will use to assist your preparation of an agreement for sale on behalf of the vendor.

“Vendor: Analiese Barnett (title now held in names of Analiese Barnett and Betzy Barnett (now deceased) as joint tenants

Purchaser: James Jarrett

Property: Fully furnished 3 bedroom/2 bathroom apartment; Unit # 25 of strata complex; now occupied by tenants, but Purchaser wants to move in immediately on closing

Purchase Price: \$4 million – payment of 25% of purchase price on signing agreement, balance on completion

Taxes etc. to be apportioned according to law;

Purchaser to get mortgage from National Housing Fund to cover 75% of purchase price."

Prepare a memorandum to the partner outlining your advice on how the following specific matters will be addressed in the agreement for sale:

- (i) the vendor's request for a payment by the purchasers of 25% of the purchase price on the signing of the agreement;
- (ii) any further instructions you will need on the Unit to assist your preparation of the agreement and for advising the vendor; and
- (iii) the special conditions that you would recommend be included in the agreement, giving reasons.

QUESTION 5

Joanne is a joint tenant with her now deceased husband Pedro, of a property which consists of a two-bedroom apartment, registered under the strata/condominium legislation of your jurisdiction. Joanne is migrating to live with her daughter in the Cayman Islands and wants to sell the apartment.

Joanne tells you that Pedro always dealt with all matters in relation to the property. Your instructions are that since Pedro's death she has done nothing in relation to the property because she cannot find the certificate of title/land certificate.

She has identified a purchaser and is anxious to proceed with the sale.

Advise Joanne on the procedural steps she would be required to take to address the matter of the missing certificate. Your advice must include the reasons you deem it important to deal with the missing certificate, identifying any documents required and detailing their contents.

QUESTION 6

By his Will, David, now deceased, made the following provisions:

“I appoint my wife Princess as Executor. I appoint Ronaldo and Kate my Trustees. I devise my property known as ‘Home High’ located at 120 Mountain Ave. to my wife Princess for life and thereafter to our daughter Charm.”

Princess is anxious to sell ‘Home High’ because of all the memories of her husband that the property kept alive. If a sale does not materialize in short order she wants to give the property to her son Phil who is getting married and who she would like to start off in married life with a solid base.

Advise Princess on the following:

- (i) the procedural steps to be taken to pursue a sale of the property. Your advice must include the matters to be taken into account in pursuing a sale; and
- (ii) the procedural steps to be followed and the matters to be taken into account if Princess wishes to transfer the property to Phil as a gift.

QUESTION 7

In May 2013, Jon Michael orally agreed to sell Pauline all of the interest he holds in two (2) acres of land. Pauline confirmed the arrangement in a letter to Jon Michael in June 2013. In that letter she enclosed a cheque for \$500,000 payable to Jon Michael. The letter indicated that the payment represented “part payment on the transaction”. The letter also stated that “The balance will be paid when title to the land is presented.”

Jon Michael sent a receipt to Pauline for the money paid, together with a note dated June 30, 2013 stating that Pauline “can now take possession of the property pending completion as was discussed”.

Pauline has now written to Jon Michael indicating that her application for a mortgage was turned down and that she now has to find another way to pay the balance. In the circumstances she is seeking Jon Michael’s approval to make payments in instalments over a period of 6 months.

Jon Michael is very upset, saying that there was never any discussion with Pauline about a mortgage to pay the balance of the purchase price. He also tells you that in any event there was no agreement for sale as he never signed any document with Pauline.

Jon Michael wants out of the deal. He has instructed you to write to Pauline indicating that the deal is off as there is no binding agreement with her for the sale of the property. Further, that having waited for so long to learn that she cannot find the balance purchase price, he will keep the \$500,000 and move on.

Advise Jon Michael whether you can proceed with his instructions, giving reasons and any recommendations that you may have as to how Jon Michael can deal with the matter.

QUESTION 8

You are instructed by ABC Building Society which is seeking your assistance in setting up its Debt Recovery Unit. The managing director has asked that you prepare guidelines with accompanying notes to be used by officers when considering foreclosure on properties. It is anticipated that these guidelines will form part of the manual, which is being formulated for the Unit.

Prepare the guidelines and notes.

END OF PAPER