

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
SECOND YEAR EXAMINATIONS, 2013

CONVEYANCING AND REGISTRATION OF TITLES

(FRIDAY, MAY 17, 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

Posh Homes Ltd. is a company duly incorporated under the laws of your jurisdiction. The company has recently acquired five acres of land on the south coast and is planning to build single-family dwellings in a gated community. The target market is young professionals who, it is anticipated, would be able to pay the \$4M purchase price.

The land is restricted to use for agricultural purposes. However, a recent study has revealed that the soil is unsuitable for growing root crops although farming remains the major employer in the district. Nonetheless, the residents of that area strongly support residential development in the district and about two years ago a luxury apartment complex was constructed on the adjoining property.

Mr. Winar, the company's managing director, consults you and asks that you advise the company on the following:

- (i) the ground(s) which Posh Homes Ltd. can rely on to support its effort to build houses for residential purposes, having regard to the present restriction on user; and
- (ii) the procedural steps to be taken to address the restriction on the use of the property. Your advice must include identifying the document(s) required and the contents of such document(s).

QUESTION 2

In February 2013 Anthony Blacks agreed to purchase the fee simple interest in an unimproved lot from Sammy Whites. Anthony erected a fence around the lot with Sammy's knowledge and agreement. Anthony has been making payments to Sammy in instalments and since March has been preparing the land for cultivating cassava. Anthony has paid \$400,000 to date and has shown you the receipts, all of which are signed by Sammy. There is an outstanding balance of \$600,000. Consistent with Anthony's understanding of the arrangement, he says he will continue to pay \$100,000 per month until full payment is made.

Sammy has now sent Anthony a text message saying that he must pay the balance by the end of May, failing which he will keep all payments made to date and remove him from the land. Sammy's reason is that it is taking Anthony too long to complete payments and in any event, since he signed no written contract, technically there is no agreement.

Anthony is distraught because he has spent significant sums of money to prepare the land and is now worried that he will lose his investment.

Prepare a letter that you will send to Sammy on Anthony's behalf, based on the facts Anthony has outlined to you.

QUESTION 3

Pamela lives in a three-bedroom house, which was a gift from her father Andy Sr. who left clear instructions in writing that Pamela is to own all of the interest in the property until her death or marriage. Thereafter the entire interest is to pass to her brother Andy Jr.

Pamela just got engaged to Ishmael on her birthday a few days ago. She wants to sell the property and use the proceeds of sale as her contribution to the joint purchase of a property for their matrimonial home. Pamela tells you that since she is entitled to all of the interest it is her right to make this decision. In any event she is of the view that her brother Andy Jr. is quite capable of taking care of himself and it should not pose a problem for him.

Advise Pamela whether she can proceed with the sale on the bases she has outlined to you. Give reasons for your advice and outline any procedural steps that you would recommend that she take in the circumstances.

QUESTION 4

Pete, Jasmine and Johnathon are the joint tenants of property known as 20 Mellow Drive (“the Property”). Pete died in 1999, and within months of Pete’s death, Jasmine also died. Johnathon, who lived overseas for many years, paid little attention to matters relating to the Property as he had no plans to return to the jurisdiction.

Johnathon died one month ago, leaving all of his estate to his wife, Sally. His estate includes the Property, title to which is still held in the names of the three joint tenants.

Sally now seeks your advice as to what steps she would be required to take to have title to the Property vested in her name. You are to outline the required procedural steps, any documents required and the contents of such documents.

QUESTION 5

Topclass Recording Studio is managed by the partners Norris, Lyndon and Craig. The business is conducted from a property, which is registered in the names of Norris and Lyndon as joint tenants. The partnership is not working out and Craig, who has been essentially ostracised by Lyndon and Norris, received a letter stating that his position with Topclass Recording Studio has been made redundant, due to a restructuring of the business. A cheque, which the letter stated represents all monies due and owing to him, was enclosed with the letter.

Craig's instructions are that the property from which the business is conducted is held in the joint names of Lyndon and Norris. The agreement has always been that his (Craig's) contribution to the partnership would be his skills as an engineer, and that each of the three partners would have a one-third interest in the property and the business in general.

Craig therefore insists that he has an interest in the property and wants to pursue his claim in court. In the meantime, he wants to know how he may ensure that Lyndon and Norris do not rob him of his share, as court matters take such a long time to be dealt with.

Advise Craig on the steps that he may take to protect his interest in the property, pending the outcome of his claim in court. Your advice must include the procedural steps that he may take, any documents required and the contents thereof.

QUESTION 6

By an agreement in writing dated January 31, 2013, Alison agreed to sell her fee simple interest in her studio apartment to Emile for \$3,500,000. Emile made an initial payment on the purchase price of \$500,000 inclusive of a deposit of \$350,000. The agreement was that completion would be on or before April 30, 2013, with vacant possession, on presentation of a registrable instrument of transfer.

On April 15, 2013, Emile wrote to Alison asking for four (4) weeks extension of time to complete the sale. He said he had encountered a little challenge with his finances and would need some time to sort out the matter. Alison consented. The time has passed and to date Emile has not made contact with Alison on the matter. Alison is very upset about Emile's discourteous behaviour, especially because she had turned down another offer she had received for the apartment.

Alison instructs you to write to Emile informing him that the \$500,000 has been forfeited, since he failed to honour his part of the contract.

- (i) Advise Alison whether you can accept her instructions as given. Give reasons.
 - (ii) Prepare an appropriate response to be sent to Emile having regard to your advice in (i).
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QUESTION 7

Verona Mays is the proprietor of the fee simple interest in a condominium/strata unit located at 122 Lakeshore Rd. The property is mortgaged to Shady Building Society. Verona tells you that the Loans Officer at Shady Building Society advised her in a recent meeting that he has

discovered that the Duplicate Certificate of Title/Land Certificate to the property cannot be found after a break-in at the offices of the Building Society two months ago.

Verona wants to add her sister Marie's name to the title as Marie has agreed to assist with the mortgage payments. Shady Building Society has already given its approval to this plan.

Verona seeks your advice and assistance on the following:

- (i) what steps she would be required to take to add Marie as the joint holder of the fee simple interest; and
- (ii) the procedural steps to be followed to acquire a new Duplicate Certificate of Title/Land Certificate.

Your advice in (i) and (ii) must include identifying the document(s) required and the contents of each.

QUESTION 8

Tuitts mortgaged property located at 10 Fast Lane to All Money Bank. The property is an unimproved lot, which Tuitts uses to display used Japanese cars he offers for sale. The property is actually located in a sought-after area and comprises 15,000 square feet of land overlooking Paradise Bay.

Tuitts has been facing financial difficulty for some time now and the mortgage has not been paid for the last three months.

A few days ago, Tuitts received a telephone call from his friend Joan, telling him that she saw an advertisement in the local paper that the property was being sold by All Money Bank for \$4M or nearest offer. Tuitts was shocked and most embarrassed. Only then was he able to figure out why over the past few days so many vehicles with curious onlookers had stopped by the premises. He had erroneously thought that persons were simply looking at the arrival of new SUVs on display.

Tuitts' instructions are that he had no notification from All Money Bank of the intended sale. He also says that the last valuation, which was done about six months ago for insurance purposes, stated that the property was worth about \$10M.

Tuitts is seeking your advice on the following:

- (i) the procedural steps that All Money Bank, as mortgagee, is required take to properly exercise its power of sale, and the matters to be taken into account in doing so; and
- (ii) the options available to Tuitts in the circumstances.

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