

COUNCIL FOR VOCATIONAL LEGAL EDUCATION

NOTARIES' EXAMINATION – SEPTEMBER 2018

PAPER IV – LAW OF IMMOVABLE PROPERTY

(THREE HOURS)

Candidates have ten minutes to study the Examination Paper which consists of 4 pages before they start writing.

All questions carry equal marks and there are SIX QUESTIONS in all out of which FOUR must be answered.

Marks will be granted, where appropriate, for correct reference to enactments and case law.

EACH QUESTION MUST BE ANSWERED ON SEPARATE SHEETS WITH CLEAR MARKING AS TO THE QUESTION ANSWERED AND THE NUMBER OF PAGES.

MAKE SURE THAT YOU PUT ALL YOUR ANSWERS IN THE ENVELOPE PROVIDED.

Question 1

The *de cujus* was the owner of a plot of residential land of an extent of 1 arpent 50 perches at Anse Courtois over part of which he had built a small concrete dwelling house which is still occupied by his former partner and his five children. A prominent commercial bank holds a first rank fixed charge over the property as security for a housing loan of 4 million rupees obtained by the *de cujus* approximately one year prior to his untimely death. Two of his children are still minors and his three eldest children are of age. The *de cujus* had fallen into arrears on account of his failing health. The bank has enforced its fixed charge and caused the property to be seized. Proceedings for the sale by levy are pending before the Master's Court. In the meantime his eldest child has been adjudged bankrupt. A property developer steps in and offers to acquire the property from the heirs for a purchase price of 5 million rupees, the bank to be refunded from the proceeds of the sale. The developer instructs you to draw up the notarial deed of sale.

Advise the property developer.

Question 2

Meghan and Harry were civilly married under the legal regime of community of goods and property. Some three months after their marriage they moved into a small furnished two-bedroom flat which they had jointly purchased by notarial deed from one of Harry's colleagues. The marriage is thereafter dissolved by a permanent decree of divorce. Harry then claims that the flat never formed part of the assets of the legal community on the ground that the whole of the purchase price was derived and paid for by him from the proceeds of the sale of a plot of bare land which he had inherited from his grandmother.

Advise Meghan as to her property rights.

Question 3

Three children have inherited a plot of agricultural land of an extent of 15 arpents at La Salette, Grand Baie, from their parents. The land was previously under sugar cane crop but is now bare land. The two eldest children wish to devise and implement a property development project on the land by constructing nine luxurious villas to be offered for sale to wealthy non-citizens. The youngest sibling is mentally deficient and requires constant psychiatric treatment. The other heirs who have independent means of their own intend to fund the project as they feel that it would be in their best interests and that of their mentally deficient sibling. You are instructed to advise both promoters as to the steps and precautions which should be taken and the authorisations which should be sought and obtained so as to bring the project to fruition.

Question 4

An estate agent acquires three plots of residential land of 45,50 and 55 perches respectively from various parties who have inherited same but are bound to put their properties on the market as same are not conveniently divisible in kind. The properties are acquired by means of three notarial deeds executed before one and the same notary. The estate agent then undertakes landscaping works and subdivides the three plots into three subplots each which he sells to his clients with a nice mark-up after having obtained the necessary clearances. The nine deeds of sale are executed before the very same notary who receives the purchase price from each of the estate agent's clients. Thereafter the notary refuses to provide an account of the various transactions to the estate agent and the notary pockets the net proceeds of the sales under the false pretext that the estate agent has not refunded him the sums he has advanced for the purchase of the three plots.

You are instructed to advise the estate agent.

Question 5

A leading commercial bank has by a deed of loan lent several million rupees to a private company to finance its property development project and its commercial activities. The loan is secured by first rank fixed and floating charges on the debtor's land. Several flats have been built on the debtor's land and some of them have thereafter been fraudulently sold by one of its directors to the debtor's related companies in which the director is a majority shareholder, in clear fraud of the rights of the inscribed creditor but before the bank caused the debtor to be placed in receivership. At the instance of the receiver manager the aforesaid fraudulently distracted assets have been vested into the hands of the Curator of Vacant Estates. The receiver manager of the company wishes to challenge the validity of the aforesaid fraudulent transfers to the related companies.

Advise the receiver manager.

Question 6

An old landowner has reluctantly agreed to stand as a guarantor in the sum of 4 million rupees for the refund of a bank loan granted to the family business of a close relative of hers and she consents to the inscription of a first rank fixed charge on her land. By the terms of the deed the charge holder is expressly bound to notify the debtor and the guarantor before the charge is enforced against the guarantor's property. The debtor has serviced most of the loan and a final debit balance of 50,000 rupees remains outstanding. Without prior notice the bank causes the land to be seized and brings proceedings of its sale by levy.

You are instructed to advise the debtor and the guarantor.