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FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 1985

LANDLORD AND TENANT

Monday, August 12, 1985

Instructions to Students

- a) Time: 3½ hours
- b) Answer FIVE questions only
- 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.

QUESTION 1

In 1962, Augustus rented a dwelling house to Chubby at a monthly rental of \$250 payable on the first day of each month. In 1976 Chubby constructed a large room onto the side of the house from which he began conducting a hardware business.

In January, 1980, Chubby left the premises and has not been seen since. His mistress, Priscilla, remained in occupation of the building, continued Chubby's hardware business and continued to pay the rent to Augustus but in an erratic manner.

In January, 1984, Priscilla completed construction of another large room on the opposite wing of the building from which she commenced to conduct a dressmaking business. Augustus wrote to Priscilla, complaining of the new change of use, stating that he wanted her out and, subsequently, refused to collect the rent.

The new wings on the house, and the fact that it was considered tenanted, added considerably to its commercial value and in March, 1984, Augustus sold the premises to Laddie.

Laddie, who wishes to have the premises for his own use and occupation, approaches you for advice on the respective rights of Priscilla and himself.

Advise Laddie.

QUESTION 2

Nancy converted her dwelling house in Mona into 8 flats which she intends to rent to students. Two of the flats are completely self-contained while the other six share bathroom and kitchen facilities.

Nancy regards students as unreliable and devised the following scheme to ensure the payment of rent. Each tenant is required to sign a rental agreement with the landlord whereby they purport to be joint tenants with all the other occupants who are also students. Nancy signs the rental agreement as "landlord and agent of the other joint tenants".

One of the self-contained flats is rented to Casio, a student. Five of the flats which share bathroom and kitchen facilities are also rented to students. The other flat with shared facilities is rented by Spliff, a drug salesman and the last flat is rented to Starpoint, Nancy's driver.

In April Starpoint left Nancy's employment but refused to give up possession of the flat he occupies while in August Nancy discovers that all the tenants but for Casio, Spliff, and Starpoint have left the premises and none of those who left paid rent since May.

Nancy insists that Casio, Spliff and Starpoint make up the arrears of rent due from the defaulting students and that Starpoint is no longer entitled to retain possession of the flat.

Advise Nancy.

QUESTION 3

Quick-Jerk Ltd., a company incorporated under the Companies Act with powers to operate a fast-food business and which is prohibited by its Memorandum of Association from engaging in real estate transactions, completed the construction of a commercial building in January 1985, and leased the entire building to Fly-by-Nite Tours Ltd., a travel agent, for 21 years. Fly-by-Nite Tours Ltd. immediately entered into the following agreements to sub-let offices in the building:

with Stacy, a fifteen year old music teacher, for a term of 25 years to begin at a time to be determined by the parties;

with Peter, a foreign consultant employed to the government, for the duration of the period of his employment in the country;

with Simon, reserving the right for the Fly-by-Nite Tours Ltd.'s window cleaner to enter the premises on weekends for purposes of cleaning the windows;

with Tony, a university student and part-time process-server, on condition that no other student is allowed to work in that office without the prior approval of the landlord;

with David, "for the term of one half year and so on from half year to half year until the said tenancy shall be determined which shall not be determined by the landlord company until they shall require the said premises for the purposes of their own business undertaking".

Simon, Tony and David have taken possession of their respective offices.

Quick-Jerk Ltd. has opened up potentially lucrative markets in North America for the export of frozen jerked pork and requires the entire building for its export drive.

Advise Quick-Jerk Ltd.

QUESTION 4 (ANSWER EITHER A OR B)

A) Flexi-Style Ltd., furniture dealers, in its regular fortnightly sale, sold to Sally on hire purchase terms, a "Flexi-feel Super-sof" water-bed normally priced at \$6000 for the sale price of \$800. After two-thirds of the price of the water-bed had been paid Sally fell in arrears and, after she was two months in arrears, she was served with notice of default by Flexi-Style Ltd.

Sally is the tenant of an apartment owned by Gilbert. She is also in arrears with the payment of her rent and now owes Gilbert \$900. Gilbert sent his friend Biggs to levy distress on the premises. One morning at 5 a.m. Biggs went to the apartment, began dismantling the water-bed and completes the process three hours later. Biggs then takes away the water-bed and a cigarette case belonging to Sally's friend, Goldie.

- Advise (i) Flexi-Style Ltd. whether they can recover the water-bed and what action they need to take.
- (ii) Sally, who wishes to sue Gilbert for irregular and excessive distress.
- (iii) Goldie, who wishes to recover the cigarette case.

B) Advise L, the landlord, in the following circumstances:

- i) In assessing the standard rent of 10 apartments in the New Kingston area, the Rent Assessment Officer calculated the standard rent as 10% of the value of the apartment, 5% of the value of the swimming pool, 15% of the value of the land that forms the common area, and 5% of the expenses incurred in maintenance.
- ii) T, the tenant, sublets one room in the apartment to X. T has ceased paying rent and L, the landlord, obtained an order from the court for possession of the premises. X refuses to give up possession and tenders the standard rent for the whole apartment.
- iii) C occupies an apartment on a monthly tenancy and with the knowledge of L, conducts a mail-order business from the apartment. L serves one months' notice on C to give up possession of the apartment because he wants it for his own use and occupation. C maintains that the notice is too short because he has a commercial tenancy.

QUESTION 5

- i) Leggo leased an apartment in Happy Vale Mews to Tango for one year with an option to renew if Tango desires.

Since December of 1984, Scrooge, Leggo's other tenant who occupies the apartment adjacent to Tango's, has complained regularly and bitterly to Leggo about the noise and smells emanating from Tango's apartment and has threatened suit.

Tango's lease is coming up for renewal.

Advise Leggo if he can avoid renewing the lease or, if the lease is renewed, whether there is a way of avoiding further annoyance to Scrooge.

- ii) Mitchigan has for many years been the tenant of premises at 16 Bridgeport Road. In January he cut down a large old breadfruit tree on the property. Smiley, the landlord, is very upset and has threatened to evict Mitchigan and sue for damages. Smiley maintains that the tree was one of the first planted in the Island in the eighteenth century and is of immense historical value.

Mitchigan argues that the tree was infested with termites which had begun to attack the house and its contents and that an antique sea-chest given to his great-grand uncle by Captain Bligh was already damaged. Mitchigan held back the rent for two months as compensation for the damage to the sea-chest.

Advise Smiley.

QUESTION 6

Alonzo, who owns three shops in Peaceville Plaza, retains one of the shops to operate the "Occidental School of Transcendental Meditation", leases another to Basario for seven years who uses it to establish the "Ah-So Peach Blossom Chinese Food" restaurant, and three months later he rents the third to Constance on a monthly tenancy to operate a dress shop.

Two months after she took possession of the shop, Constance assigned her tenancy to Emile, a mechanic specializing in the repair of diesel engines, who conducts his trade from the premises.

Alonzo now discovers that the pleasant smell of chinese cooking from Basario's restaurant is distracting to his students who are not performing well in their meditation exercises. Alonzo fears that the reputation of his school will suffer and has served notice to quit on Basario. Basario also complains of the noise and dust emanating from Emile's garage. There has been a noticeable decline in his custom after Emile established his garage. Moreover, the noise coming from the garage has forced him to add sound-proofing to his shop at great expense which has only partially solved the problem.

Basario does not wish to give up possession of the shop but wishes to get some relief from Emile's activities.

Advise Basario.

QUESTION 7

Draft a letter to your client, a prospective tenant, advising him on the meaning and import of the following covenants in a lease:

- i) that the tenant shall not assign, underlet, or part with possession of the demised premises without the prior consent in writing of the landlord,
- ii) that the tenant shall deposit a sum equal to 6 months rental against possible breakages or repairs,
- iii) that the tenant shall use the premises as a bakery only;
- iv) that the tenant shall have the right of first refusal to lease the demised premises for a further period of 7 years.

QUESTION 8 (ANSWER A OR B)

A) i) Yvonne is the tenant of a flat in controlled premises constructed thirty years ago. The premises have never been assessed for purposes of the Rent Restriction Act nor has the standard rent been determined. Yvonne pays rent at \$200 per month which is the same as her friend Paula pays for similar accommodation in a building constructed in 1983. The written tenancy agreement contains the following term:

Provided that where any part of the rent shall be in arrears for 21 days whether lawfully demanded or not the lessor may re-enter upon the said premises and immediately the said term shall absolutely determine.

On several occasions Yvonne has been a month behind in paying the rent and on three occasions she paid the rent in two or more instalments. One week ago, when she was 22 days in arrears she returned to the flat and found her personal effects carefully piled outside the flat. The lock has been changed and she cannot gain entry to the flat.

Advise Yvonne on the general legal position.

ii) Al is the landlord of controlled premises in Kingston. The windows and the drains to the side of the house were damaged by a storm and Al is now about to replace them. He is contemplating using this opportunity to replace the galvanized zinc sheeting roof with one of decorative aluminium tiles and to renovate the kitchen. Before he undertakes these activities, however, he wishes to know how this will affect the rent he can recover.

Advise Al.

3) Charles, Oscar, William, Virginia and Becky live in a jurisdiction other than Jamaica.

Charles rented his bungalow at Black Rock to Oscar, a musician, for \$400 per month. Oscar, in turn, rented one of the rooms to William for \$200 per month. Although William has regularly paid his rent to Oscar, Oscar has not paid rent for eight months and in February he moved all his personal effects, except for an old trombone and his very valuable Steinway piano, into the residence of his girl friend, Virginia. After Oscar moved out of the bungalow, William invited his friend Becky to stay with him. William and Becky both commute great distances to and from work and generally leave the bungalow early in the mornings and return late at nights.

Charles approaches you for advice as to the general legal position and how best he might recover the rent and also possession of the premises.