

NORMAN MANLEY LAW SCHOOL  
Council of Legal Education

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1985

LANDLORD AND TENANT  
(Tuesday, May 28, 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.

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QUESTION 1

Layback Investments Ltd., a registered company and the owner of a commercial building, construction of which was completed in January, 1985, entered into the following individual agreements in March, 1985, to separately lease the five offices in that building:

With Dennis, a foreign consultant employed to the government, for the duration of the period of Dennis' employment in the country.

With Dorcas, a fifteen year old music teacher, for a term of 15 years to begin at a time to be determined by the parties.

With Reg, director of the 'Easy View Detective Agency', "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."

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

With Peter, a sculptor working in stone and clay, reserving the right for the landlord's cleaner to enter the premises on weekends for purposes of cleaning.

Dennis, Dorcas and Reg have taken possession of the respective offices.

Layback Investments Ltd. is now in receivership and the receiver, having discovered that the rents reserved on the above agreements are unreasonably low taking into account the value of the premises and the rental realised by similar premises in the district, is desirous of re-negotiating the rent or terminating the agreements.

Advise the receiver.

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QUESTION 2

Leslie, the owner of two lots, Rightwing and Leftwing, allowed his friend Derrick to occupy Rightwing, saying: "You may remain as long as you wish on condition that you learn to command respect and make yourself a better man." Leslie collected no rent from Derrick and encouraged him to erect a house on the premises, telling him that "The building of a house is the building of character and you will have the use of the house for ever." Acting on this Derrick constructed a small cottage on Rightwing.

Leslie entered into an agreement in writing with Janet to lease to her Leftwing for the term of "one, three, five or seven years" for the annual rent of \$1,200 payable in advance in equal monthly instalments. Janet uses Leftwing as a market garden. On September 6, 1983, Janet served notice on Leslie that she intends to quit by April 1, 1984. On April 1, 1984, Janet, unable to find a suitable alternative property, tenders the rent which Leslie accepts.

In June, 1984, Leslie died leaving his properties on trust for sale and his executors, who desire to sell the properties, seek your advice on the rights of the respective occupants. Advise them.

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QUESTION 3

In 1982, Big Foote rented a two-room house on a one-acre lot to Nean Derthal to be used as a dwelling house at a monthly rental of \$100 payable on the first day of each month. In 1983, with Foote's knowledge, Derthal constructed two additional rooms on the premises which he uses as a bakery and pastry shop. In 1984, Foote sold the premises to Crom Agnon who immediately served Derthal one clear month's notice to quit since he wishes to have the premises for his own use and occupation.

Derthal is unwilling to vacate the premises, he would need more than one month to find suitable premises to re-establish his pastry business, and he would wish to be compensated for the improvements he has made to the land.

Advise Derthal.

Would your answer be any different if Foote had served notice to quit before he sold the premises?

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QUESTION 4 (ANSWER EITHER A OR B)

A. Happy-Deal Ltd., furniture dealers, sold on hire-purchase terms, a "Delux Super-sof" water-bed valued at \$6,000 to Kay who is the tenant of an apartment owned by Harry. After two-thirds of the price had been paid, Kay fell in arrears and after she was two months in arrears, she was served with notice of default by Happy-Deal Ltd.

Kay is also in arrears with the payment of her rent and now owes Harry \$400. Harry sent his friend, Biggs to levy distress on the premises. Biggs takes away the water-bed one night at 8 p.m.

Advise (i) Happy-Deal Ltd. whether they can recover the items and what action they need to take.

(ii) Kay, who wishes to sue Harry for irregular and excessive distress, under the relevant statutory provisions.

B. Slyms is the monthly tenant of controlled premises situate at 2 Broune Street, Kingston, owned by Fatts and pays rent in advance of the first day of each month. On January 5, 1985, Slyms received the following notice from Fatts:

" To: Slim

I, the undersigned, give you notice to quit and deliver up possession of premises at 2 Brown Street, Kingston, of which you are my tenant on the 5th of February, next or at the end of the month of your tenancy which will expire next after the end of one clear month from the date of the service of this notice on you.

Dated this 5th day of January, 1985

Signed: Fatts "

On March 1, 1985, Slyms tendered his rent to <sup>FATTS</sup> Biggs who refused to accept it on the basis that he wants the premises for his own use and occupation because the house he now occupies is in need of repair. Fatts instead gave Slyms \$200 to assist him in the cost of removal.

On April 5, 1985, Fatts commenced action to recover possession. Slyms, not wishing to contest the matter, gave up possession of the premises and is staying with friends. That arrangement is inconvenient but Slyms cannot find suitable accommodation elsewhere. Slyms now discovers that Fatts uses the house at 2 Broune Street only occasionally as a love-nest for himself and his mistress, Bunny.

- i) Advise Slyms as to his chances of regaining possession.
- ii) If Slyms had not voluntarily given up possession of the premises, could he have successfully defended Fatt's action to recover possession?

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QUESTION 5 (ANSWER EITHER A OR B)

Mike, Florrie and Eddie live in a jurisdiction other than Jamaica. Mike, who is a tailor, rented a room from Florrie on a monthly tenancy at \$100 per month and is now ten months in arrears. Florrie served notice on Mike to quit for non-payment of rent. Mike continued to occupy the room and at the end of the period of notice Florrie commenced proceedings for recovery of possession.

Before the matter comes to trial, Mike moves all his possessions in the room to the premises of Eddie who lives next door and went to live with his relatives in another town.

On discovering this Florrie instructed the Bailiff to levy distress for \$1,000 arrears of rent on Mike's goods at Eddie's premises. The bailiff forcibly entered Eddie's premises and impounded a sewing machine and refrigerator matching the description Florrie had given him.

The following day Eddie arranged for the refrigerator to be sent to Mike at his new residence.

Florrie is uncertain of his rights and now seeks your advice as to what steps are available to recover the arrears of rent and the cost of levying the distress.

B. The owner of five recently constructed studio apartments in New Kingston, applied for an assessment of the standard rent of these apartments.

In determining the value of the premises the Rent Board refused to hear evidence of a valuator called by Terry, a tenant of one of the apartments, on the basis that the Board had already heard the evidence of its own valuator who had valued the apartments at the amount charged by the builder plus the cost of extras the owner said he had put in later.

The Board also decided that the sums to be charged the tenants for the maintenance of the common areas should not form part of the standard rent but should be made subject to separate arrangements between the landlord and the tenants because the amounts to be paid for such maintenance change from time to time.

Moreover, the board also accepted the owner's argument that the standard rent should reflect the increased cost incurred in repairing the roof because the original roof was constructed of cheap material, it had fallen in before the tenants took possession and it was immediately replaced.

Advise Terry.

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QUESTION 6

Hope rented a three bedroom house in Vinyard Town to Faith for \$300 per month to be used for residential purposes only and not to sublet or assign. Three months later Faith sublets all of the house but for one room to Charity for \$400 per month, who immediately establishes a beauty parlour on the premises. Hope is aware of the breaches and complains to Faith but continues to collect rent from Faith.

Charity's business so improved that she made extensive modifications to the garage and constructed a new room onto the house to be used as a waiting room. She also cut down the trees in the garden and paved it for use as a parking lot. Hope made no further complaint to Faith after construction began. In fact she once passed by and said "That is a nice thing you are doing."

Six months after construction was completed, Hope served the following notice directed to both Faith and Charity: "You are hereby given notice to quit and deliver up my house in Vinyard Town as soon as you may legally be required to do so for breaches of covenants." Two months later Hope commences proceedings against Faith and Charity for recovery of possession and for damages for breaches of covenants and waste.

Faith and Charity approach you for advice on their respective rights. Advise them.

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QUESTION 7

Baskerville, the owner of contiguous properties at No. 221a and 221b Baker Street, rented No. 221a Baker Street to Dr. Watson to be used as a medical surgery and six months later rented the premises at No. 221b to Holmes to operate a detective agency. Both tenancies contained expressed covenants not to assign or sublet without the permission of the landlord.

Watson, who enjoyed a thriving and prestigious medical practice during the first six months of the tenancy, noticed that his practice began to decline after the letting of No. 221b to Holmes. Watson's clients complain to him that they had difficulty getting pass the large number of strange persons that congregated outside Holmes' door, that they could no longer find parking places, that crime was on the increase, that they found the sound of a violin emanating from next door irritating, and that many of them would rather go to a medical practitioner with a more prestigious address. Watson's medical practice so declined that he was forced to supplement his income by writing accounts of the activities next-door for publication in the detective magazine "Strange Happenings."

Four months after he began occupying No. 221b Baker Street, Holmes sub-let two rooms to The Baker Street Irregular Co-operative Disco and Food Supply Company Ltd., to operate a dance hall and jerk-pork restaurant. The resulting noise from the dance hall and restaurant has made it very difficult for Watson to continue his medical practice or his increasingly lucrative activities as a neophyte writer.

Baskerville is of the opinion that the activities of Holmes and the Baker Street Irregular Co-operative Disco and Food Supply Company Ltd. are reducing the value of his Baker Street properties. Baskerville is also sued by Watson who claims damages for breach of the covenant for quiet enjoyment.

Advise Baskerville.

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QUESTION 8

By an instrument under seal, made between Zac and Aubry, Zac leased premises known as No. 1 Short Mountain Road to Aubry for a term of ten years commencing from the 1st January, 1975, at a monthly rental of \$1,000 subject to the covenants, conditions and agreements contained in the said agreement.

The lease contained the following covenants:

- i) On payment of the sum of \$5,000 on signing hereof the lessee shall be granted the option to purchase the demised premises for the sum of \$100,000 such option to be exercised before the expiration of the term hereby created.
- ii) In the event the lessee being prepared to lease the demised premises for another term at the expiry of the term hereby created the lessee shall have the right of first refusal to lease the demised premises for a term of ten years commencing from the expiry of the term hereby created such first refusal to be exercised by the lessee on or before the expiry of the present term.

On executing the instrument Aubry paid to Zac the sum of \$5,000 in consideration for the option. At the expiration of the term, Aubry demanded a renewal of the lease for a further term of ten years at the same rental and one month later tendered a cheque for the sum of \$106,000 saying "This is for the rent, the option to purchase and the purchase price."

No. 1 Short Mountain Road now has a commercial value of \$250,000 and Zac has received an offer from Willie to lease the premises for ten years for \$2,500 per month.

Advise Zac.

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