

NORMAN MANLEY LAW SCHOOL

Council of Legal Education

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COUNCIL OF LEGAL EDUCATION  
MONA, KINGSTON 7, JAMAICA

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1986

LANDLORD AND TENANT

(Tuesday, May 27, 1986)

Instructions to Students

- a) Time: 3½ hours
- b) Answer FIVE (5) 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

Eggbert is a university lecturer and under his contract of employment he is provided by his employer with a two-storey house in the vicinity of the university. In order to increase his income Eggbert converts the bottom floor into four flats which he rents to students.

Eggbert 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 each purports to be a joint tenant with all the other tenants who are also students, for a period of one year from the date of signing. Eggbert signs the rental agreement as "landlord and agent for the other tenants".

In February, two of Eggbert's tenants were expelled from the university for unnatural behaviour and left the flats without paying rent. Eggbert insists that the remaining tenants, Sigmund and Albert, pay the rent for defaulting students and has threatened suit if they fail to do so.

The University has offered Eggbert a larger house and he serves notice on Sigmund and Albert to immediately quit and deliver up possession of the flats they occupy. Eggbert's letter to quit advises Sigmund and Albert that he, Eggbert, is a mere licensee of the University and therefore cannot create a valid lease of the premises.

Sigmund and Albert approach you for advice. Advise them.

QUESTION 2

In 1982, Mary leased to Susan, for seven years, a dwelling house situated in an area which is zoned for residential purposes only. Immediately on taking possession Susan converted the garage into an office from which she began conducting the business of a geological consultant.

Six months later Susan left the premises to take up a Dimlight Fellowship tenable at the University of Tampa and has not been seen since. Susan's boy-friend, Sam, remained in occupation of the house, continued Susan's business and paid the rent irregularly.

In January, 1986, Sam added a large room to the house from which he conducted a pesticides retailing business.

Mary wrote to Sam, complaining of the change of user of the premises. She further stated that she wanted Sam out of the premises and subsequently refused to collect rent.

The renovated garage and the new room on the house added considerably to its commercial value.

In March, 1986, Mary sold the premises to Bunny who wishes to have the premises for his own use and occupation. Bunny approaches you for advice on the respective rights of Sam and himself.

Advise him.

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QUESTION 3

Challenger Industries Ltd., is a company incorporated under the Companies Act with powers to operate a fast-food business and is prohibited by the Memorandum of Association from engaging in real estate transactions. It grants franchises of its ice-cream business under the registered trade name "Rummy Bunny Ice-cream" to franchisees who are required to paint their retail stores in the "Rummy Bunny" colours and display the "Rummy Bunny" name and trade mark. In addition, Challenger Industries Ltd. will lease suitable premises and sub-let these premises at a non-commercial rental to franchisees who cannot by themselves obtain suitable accommodation for shops.

Challenger Industries Ltd. entered into the following lease agreements with its franchisees:

- (i) with Fatima for a term of 25 years to begin at a time to be determined by the parties;
- (ii) with Abdul, a foreign consultant, for the duration of his employment;
- (iii) with Mustaffa, a university student, on condition that no other student is allowed to work in that office without the prior consent of Challenger Industries Ltd.;
- (iv) with Mohamed "for the term of one half year and so on from half year to half year until the said tenancy shall be determined which tenancy shall not be determined by Challenger Industries Ltd., until they shall require the said premises for purposes of their own business undertaking".

Abdul, Mustaffa and Mohamed have taken possession of their respective shops.

All of the sub-leases contain clauses reserving the right for Challenger Industries Ltd's. window cleaner to enter the premises on weekends for the purposes of cleaning the windows as well as for Challenger Industries Ltd's. workmen to enter the premises on notice and repaint the "Rummy Bunny" sign and trade mark.

Challenger Industries Ltd. has decided to get out of the rental aspect of its business and has approached you for advice on the respective rights of itself and its tenants.

Advise Challenger Industries Ltd.

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QUESTION 4 (ANSWER EITHER A OR B)

A. Skill Bedding Limited, furniture dealers, in its regular fortnightly sale, sold to Irma on hire-purchase terms, its "Superior Colonial" bed normally priced at \$6,000 for the sale price of \$800. After two-thirds of the price had been paid Irma fell in arrears. After she was two months in arrears, she was served with notice of default by Skill Bedding Limited.

Irma is the tenant of an apartment owned by Scrooge. She is also in arrears with the payment of her rent and now owes Scrooge \$900. Scrooge sent his friend Bragdaps to levy distress on goods in the apartment. One morning at 5:00 a.m. Bragdaps went to the apartment next door, entered Irma's apartment through an inter-connecting door and began dismantling the "Superior Colonial" bed. He completed this task three hours later. Bragdaps took away the bed and a personal computer which the next door neighbour, Quashie, had loaned to Irma.

Skill Bedding Limited, Irma, Scrooge, Bragdaps and Quashie are in a Commonwealth Caribbean Jurisdiction other than Jamaica.

Advise:

- (i) Skill Bedding Limited whether it can recover the bed and what action it needs to take;
- (ii) Quashie who wishes to recover the personal computer;
- (iii) Irma who wishes to sue Scrooge for irregular and excessive distress.

B. Advise the respective landlords in the following circumstances under rent restriction legislation:

(i) In assessing the standard rent of eight (8) apartments the rent assessment officer calculated the standard rent as 12.5% of the value of the apartment, 12.5% of the value of the pool, 15% of the value of the land that forms the common area and 5% of the expenses incurred in maintenance.

(ii) The lease reserves "the rent of \$50,000 per annum or such higher rent as the Rent Assessment Board may fix from time to time, in addition to such sums as the landlord shall have spent in the maintenance and improvement of the premises".

(iii) The tenant sub-lets one room in the apartment and ceases paying rent. The landlord obtains a court order for possession of the premises. The tenant vacates the premises but the sub-tenant refuses to do so. Instead he tenders the entire standard rent for the whole apartment.

(iv) The tenant occupies a house on a monthly tenancy and with the knowledge of the landlord conducts a dressmaking business from one room on the premises. The landlord serves one month's notice on the tenant to quit on the basis that he wants the house for his cousin who has returned from abroad. The tenant maintains that the notice is too short because she has a commercial tenancy.

(v) The tenant occupies a house on a monthly tenancy in which no tenancy agreement was signed and no terms specified. The tenant purports to assign the tenancy of the house without the landlord's permission and the landlord now wishes to recover the house for breach of condition.

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QUESTION 5

(i) Muhmar has for many years been the tenant of premises at 1986 Yabil Street. In February he sent his agent to cut down a large old tree on the property. Ronnie, the landlord, is very upset and has threatened to evict Muhmar and sue for damages. Ronnie maintains that the tree was one of the first of its kind planted on the Island and is of great historical value.

Muhmar argues that the tree was infested with termites which had begun to attack the house and its contents and that a valuable antique table was already damaged. Muhmar has withheld rent for two months as compensation for the damage to the table.

Advise Ronnie.

(ii) Larry leased premises to Moe for purposes of a managerie for one year, with an option to renew if Moe desires.

Since December of 1985, Joe, Larry's other tenant who occupies the adjoining premises, has complained regularly to Larry about the noises and smells emanating from Moe's premises and has threatened suit for nuisance and breach of the covenant of quiet enjoyment.

Moe's lease is up for renewal.

Advise Larry:

- (a) if he can avoid renewing the lease;
- (b) if the lease is renewed, whether there is a way of avoiding further annoyance to Joe;
- (c) what are his present liabilities to Joe.

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QUESTION 6

Edward, who owns three contiguous shops, for which he has received Certificates of Exemption under the Rent Restriction Act, uses one shop to operate a school, leases the second to Derrick for seven (7) years to operate a restaurant and lets the third to Roy on a monthly tenancy to operate a dress shop.

Two months after he took possession of the shop, Roy assigns his tenancy to Richard, a mechanic who began to conduct his trade from these premises.

Edward now discovers that the smell from Derrick's restaurant is distracting to his students. Edward fears that the reputation of his school will suffer and served notice to quit on Derrick. Derrick also complains of the noise and dust from Richard's garage. There has been a noticeable decline in the number of Derrick's customers after Richard established the garage. Moreover the noise coming from the garage has forced him to add sound-proofing to his shop at great expense.

Derrick does not wish to give up possession of the shop but wishes to get some relief from Richard's activities and recover some of the loss he has incurred.

Advise Derrick.

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QUESTION 7 (ANSWER EITHER A OR B)

A. (i) Cindy is the tenant of a flat constructed thirty years ago. The flat has never been assessed for the purposes of the Rent Restriction Act. Cindy pays rent at the rate of \$500 per month which is the same amount paid by her friend for a larger flat constructed in 1985. The written tenancy agreement contains the following terms:

*Provided that where any part of the rent shall be in arrears for 14 days whether lawfully demanded or not the lessor may re-enter upon the premises and immediately the term shall absolutely determine.*

*The landlord shall be entitled to give 7 days notice of termination for any breach of the tenant's covenants.*

Cindy has been habitually late in the payment of the rent and on several occasions paid the rent in several instalments. Cindy returned to the flat after an absence of several weeks when her rent was already 21 days in arrears and found that the lock had been changed and her personal effects placed outside.

Advise Cindy on the general legal position.

Would your advice be any different if Cindy returned to find a notice on her door dated 14 days earlier purporting to terminate the tenancy?

(ii) Whitney is the landlord of controlled premises. The windows and drain on the premises were damaged by storm and she is about to replace them. Although the galvanized zinc roof is still in good condition she is contemplating using this opportunity to replace it with one of aluminium tiles. She would also like to renovate the kitchen. She wishes to know how these renovations will affect the rent she can recover.

Advise Whitney.

B. Eeny, Meeny, Miney, Moe, and Monk live in a Commonwealth Caribbean Jurisdiction other than Jamaica.

Eeny rented his bungalow at North End to Meeny for \$800 per month. Meeny, in turn rented one of the rooms to Miney for \$400 per month. Meeny is a pawnbroker and uses the premises to store the items he hold as security in his pawnbroking business. Although Miney regularly and promptly pays rent to Meeny, Meeny has not paid rent to Eeny for six months. In March Meeny moved all his personal belongings except for a very valuable Paboosingh painting and the items he holds for his clients into the residence of his friend, Moe. Miney then invited his friend Monk to stay with him. Miney and Monk both commute great distances to work and leave early in the mornings and return late at nights.

Eeny has asked you for advice as to the general legal position and how best he might recover the rent and possession of the premises.

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QUESTION 8

Prepare a memorandum to an Attorney-at-Law who has consulted you on behalf of a prospective tenant, who wishes to be advised on the meaning and import of the following covenants in a draft lease:

- (i) that the tenant shall not assign, sub-let or part with possession of the demised premises without the prior consent in writing of the landlord;
  - (ii) that the tenant shall insure the premises for the benefit of the landlord;
  - (iii) that at the end of the lease the tenant shall give up the premises in good repair;
  - (iv) that the tenant shall use the premises as professional offices only;
  - (v) that on paying the sum of \$5,000 during the period of the lease the tenant shall have the option to rent the premises for a further period of 7 years.
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