

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR EXAMINATIONS, 2005

LANDLORD AND TENANT

(WEDNESDAY, MAY 18, 2005)

Instructions to Students

- (a) Time: 3 ½ 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 ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In August 2004, Jerome, a university lecturer in economics, was about to go on a year's sabbatical leave. He wished to leave someone in occupation of the university house which he occupied, while he was on leave. He therefore arranged with Abigaile and Shawna-Kay, two law students to stay in the house until August 2005.

In addition to paying a sum of \$8,000 per month for use and occupation they agreed to pay for electricity, water and telephone services, maintain the garden and keep the furniture and interior in good condition. The full agreement stated –

“THIS AGREEMENT is made the 1st day of September 2004 BETWEEN JEROME JONES of Southern University, Lecturer, (hereinafter referred to as “the Licensor”) of the ONE PART and ABIGAILE WARD and SHAWNA-KAY CAMERON both of Southern University, law students (hereinafter referred to as “the Licensees”) of the OTHER PART whereby it is agreed as follows-

1. The Licensor grants to the Licensees the right to use in common with others who have or may from time to time be granted the like right to the house known as “Villa Bella”, but without the right to exclusive possession of any part of the said house together with the fixtures, furniture, furnishings and effects now in the said house for one year from the 1st day of September 2004.
2. The Licensees agree with the Licensor as follows-
 - (a) To pay the sum of \$8,000 per month for the right to share in the use of the said house, such sum to be paid on the first day of each month, the first payment to be made on the 1st day of September, 2004.

- (b) Not to damage or cause any damage to the walls or floor of the said house or to the fixtures, furnishings, furniture and effects therein.
 - (c) To share the use of the said house peaceably with and not to impede the use of the said house by such other persons to whom the Licensor has granted or shall from time to time grant licenses to use the said house in common with the Licensees and not to impede the use by such other persons of the gas, electricity, water and telephone services supplied to the house, provided that each shares the cost of such services.
 - (d) Not to assign this agreement nor permit any other person except as licensed by the Licensor to sleep or reside in or share occupation of the said house or any part of it at any time.
3. Provided as follows-
- (a) If the said sum or any part thereof shall be in arrears or unpaid for at least fourteen days after the same shall have become due; or
 - (b) In the event of any breach by the Licensees of the agreements herein contained then the Licensor may by notice forthwith, determine this agreement but without prejudice to any other remedy of the Licensor.

AS WITNESS the hands of the parties hereto the day and year first before written."

Early this month (May) Jerome returned to the jurisdiction ahead of time and requested Abigaile and Shawna-Kay to vacate the premises at the end of May. They have come to see you and show you the above agreement and seek your

advice. They tell you that they have been the only occupants of the house to date and have not breached any of the terms of the agreement.

Advise them.

QUESTION 2

Your client, Marcia Millwood, recently purchased an apartment as part of her investment portfolio. The apartment is part of a condominium/strata complex. She now wishes to lease it for an extended period.

Not having had any previous knowledge of condominium/strata complexes however, she wishes advice on the legal considerations that she should be aware of in leasing the apartment.

Advise Marcia Millwood.

QUESTION 3

In 2003, Dr. Nicholas Nickelby, a psychiatrist, dissatisfied with the post-hospital care available to his patients, decided to establish a nursing home to accommodate patients who needed special care.

On the advice of a real estate agent Dr. Nickleby approached Andrew, the owner of several country houses and explained the type of property he wanted. Andrew said he had just the house Dr. Nickelby needed and showed him a large house

called "Grand Lodge", which adjoined a vacant parcel of land which was also owned by Andrew. Dr. Nickelby agreed that it was perfect for the needs of his patients and agreed to lease it for five years.

By agreement in writing dated May 31, 2003, Dr. Nickelby became the tenant of "Grand Lodge" at a yearly rental of \$36,000 payable at the end of every year of the tenancy.

The house was let unfurnished and Dr. Nickelby agreed to keep it in repair and to keep it insured during the term.

In October 2004, Andrew leased the vacant parcel of land to the Ministry of Sports. Stands were built and from early January this year (2005) football, cricket, basketball and netball have been played on the grounds on most days and sometimes by floodlights during the nights. Large crowds often witness these various activities with the resulting noise which upset Dr. Nickelby's patients.

In addition, from time to time stones, bottles and rubbish have been thrown onto Dr. Nickelby's premises and recently a number of glass windows and some of the furniture were damaged during a fracas after a football match.

Dr. Nickelby has also noticed the appearance of rats and other vermin in the house. He is of the view that this invasion is as a result of the unsanitary condition of the sports complex and the fact that food vendors leave their garbage behind at the end of matches.

Dr. Nickelby now wishes to vacate "Grand Lodge" without paying any rent and to sue Andrew for damages for breach of covenant for quiet enjoyment and derogation from grant.

Advise Dr. Nickelby.

QUESTION 4

In September 2002, Pennypincher granted Mark and his girlfriend Michelle a monthly tenancy of a small two-bedroom house (not subject to rent restriction legislation) at a rent of \$10,000 per month.

Mark and Michelle covenanted *inter alia* as follows-

“The tenants covenant at all material times to use the premises in a tenant-like manner fair wear and tear excepted”.

Pennypincher on the other hand covenanted *inter alia* as follows-

“The landlord covenants to keep the premises in good tenantable repair”.

Mark and Michelle's relationship is an unhappy one and they frequently fight. They have broken the rear door, smashed a number of windows and damaged various fixtures in the bathroom.

As a result of the damage to the door and windows, during the rainy season late last year (2004), water came into the house regularly. This resulted in damage by way of wood rot to the wooden floors, window sills and to the paint on some walls, with resultant fungus infection.

Upon a recent inspection of the house, Pennypincher noted the damage to the premises and has requested that Mark and Michelle carry out the necessary repairs within thirty days or have them done by him and the bill sent to them.

Mark and Michelle have now come to see you and seek your advice.

Advise Mark and Michelle.

QUESTION 5

- (a) On December 1, 2000, Porter Ltd., the landlords of commercial premises at 24 Main Street, demised to Jackie as a quarterly tenant, a shop on the second floor and a storeroom on the ground floor of the building. The premises are not subject to rent restriction legislation.

On April 1, 2005, Porter Ltd. gave Jackie notice to quit in the following terms-

“Dear Jackie, we the undersigned, Porter Limited, give you notice to quit and deliver up possession of the shop at 24 Main Street in respect of which you are a tenant, on July 31, 2005.”

Advise Jackie.

- (b) On Wednesday, April 5, 2005, Wallace rented “Rosewood Cottage” from Lisa as a monthly tenant. He paid Lisa a month’s rent of \$10,000 in advance and received the keys to the cottage.

On Thursday, April 6, 2005, on his arrival at work Wallace was told that he was being transferred on the following Monday to the company’s head office in Florida. Later that day Wallace visited Lisa and told her of his transfer. He also gave her one month’s notice in writing of his termination of the tenancy. He offered her the keys to the cottage and requested the return of the rent. Lisa refused to accept the keys or to return the rent paid. In addition she told Wallace that in her view the notice was invalid.

Advise Wallace.

QUESTION 6

Your client, Sale Daple, granted an elderly lady, Mrs. Walters, a ten year lease of a rural cottage which is not subject to rent restriction legislation. During a hurricane last year (2004) a tree fell on a section of the roof damaging it. Soon after the hurricane Mr. Daple visited the cottage to inspect the building for any damage. He saw the damage done to the roof but Mrs. Walters would not permit him to inspect the interior of the cottage in order to assess the damage done inside. Further, she told Mr. Daple that she had become very nervous of outsiders because the cottage was burgled and she was assaulted. As a result she will no longer permit his friends who (by oral agreement with him) were allowed to enter the premises to pick fruit, nor did she wish to have his workmen repair the roof.

The lease contains *inter alia* the following clauses binding the tenant-

“The Tenant agrees to keep and maintain the interior of the rented premises including all windows walls electrical and sanitary equipment water apparatus, drains, fittings and fixtures in a tenant like manner fair wear and tear excepted.”

“The Tenant agrees to permit the Landlord his agents, servants and workmen to enter the rented premises at any reasonable hour during the day for the purpose of periodical inspection and to effect necessary repairs upon giving three days written notice of such intention.”

The lease also contains *inter alia* the following clause binding the landlord-

“The landlord agrees to keep and maintain the foundation, roof, ceilings, walls, beams, and other structural parts of the building in the rented premises and all fixtures and integral parts thereof in good repair.”

The lease further contained the following clause –

“provided that if the rent hereby reserved or any part thereof is at anytime in arrears and unpaid for 21 days after it is due, whether legally demanded or not, or if there shall be any breach of any of the covenants on the part of the tenant contained herein, then it shall be lawful for the landlord at any time thereafter to re-enter the demised premises and thereupon the term shall absolutely cease and determine.”

Mr. Daple now comes to see you and wishes to be advised as to whether he can forfeit and re-enter the premises because of Mrs. Walters' breaches of covenants and if so the procedure to be followed.

Advise Mr. Daple.

QUESTION 7

On May 1, 2000, James leased a large two-storey building to Brown for 15 years at a yearly rent of \$18,000 payable by equal monthly instalments. From the date of the lease, Brown and his wife Sonia have been living on the first floor while he (Brown) used the ground floor as a workshop for the repair of domestic appliances. Sonia is a music teacher and conducts classes on the premises. Rent for the last six months is in arrears. Last Monday, a bailiff acting on the instructions of James, lawfully entered the premises and seized and carried away certain items.

From the first floor he took a bed, an electric clock, a piano and four new dresses, the property of Sonia, and a television set on loan to Brown from his

neighbour Kate. From the ground floor he took a washing machine which was left by Kate for repairs, a box of tools and a welding plant.

The total value of the articles seized amounts to approximately \$175,000.

Advise Brown, Sonia and Kate.

QUESTION 8

Miss Sheena Smith has come to see you. She tells you that yesterday afternoon when she returned to her leased apartment, having been away on holiday, she found the door locks changed and on looking inside through a window she observed that all her furniture had been removed. She then went next door to tell her neighbour what had happened. Her neighbour informed her that her landlord had changed all the locks and sold her furniture to a second hand furniture dealer saying that Sheena had abandoned the apartment.

Sheena further tells you that she is a monthly tenant and that her landlord, Tom Christopher, had from time to time made advances towards her which she repeatedly repelled. Recently he became more aggressive so she decided to take her vacation leave and go overseas for a month. She also paid the rent for the period she would be away so as to ensure that he would have no grounds on which to terminate her tenancy. The apartment is subject to rent restriction legislation.

She now seeks your advice.

- (i) Advise Sheena.

 - (ii) Would your advice be any different if she had not paid rent for the last month and was therefore in arrears?
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