

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, OCTOBER 2020**

LANDLORD AND TENANT

MONDAY, OCTOBER 5, 2020

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering the question, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (i) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (j) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year I OCTOBER 2020 EXAMINATIONS, LANDLORD AND TENANT DROP BOX on TWEN** by **Tuesday, October**

6, 2020 NOT LATER THAN 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

(k) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:

- Go to ***www.lawschool.westlaw.com***.
- Log in using your username and password credentials and select the **TWEN** button.
- Click on the link for “**Assignments and Quizzes**” located on the left-hand side of the navigation screen.
- Select the relevant examination and the examination drop box as follows:
 - Year I students with Examination ID numbers between 1100 -1176 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box A Year I - 1100-1176***”.
 - Year I students with Examination ID numbers between 1177 -1252 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box B Year I - 1177-1252***”.
 - Year I students with Examination ID numbers between 1253 -1326 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year I - 1253-1326***”.

Amy, an entrepreneur, owns and operates a bookshop and café in the Capital, Jurisdiction. She studied Hospitality Management and holds a Master’s Degree in the field.

The location of the business is ideal for Amy because it is located near to the Supreme/High Court, the Court of Appeal, the headquarters of several large companies and government agencies operating in the jurisdiction. Several professional legal and accounting firms, and some small businesses, also operate in the area. The bookshop and café are patronized by personnel, clients and customers of the entities that operate in the area. In addition, there has been a surge in the number of tourists visiting the Capital over the last few years and this has led to additional business for Amy. The bookshop is known for its wide selection of professional texts, and creative works authored by citizens of the jurisdiction.

The area is zoned for commercial use.

Amy owns the building which houses the bookshop and café. The building comprises three floors. The bookshop and café are operated from the ground floor.

Amy rents the middle floor to Saul, a well-known author of several cultural works, and themed photographic books showcasing places of interest in the Jurisdiction. When Saul approached her to rent him the middle floor two years ago, he said he was looking for a space away from home to write. Amy thought it would be an ideal fit. Amy's bookshop is the only place in the Capital where Saul's books are sold, and he is excited to be working so close to his audience. He relishes the idea of being able to wander into the bookshop to meet his clients from time to time; and he regularly offers readings from his cultural books in the bookshop.

Amy rents the top floor as an office to Edgar, a freelance graphic artist/designer, who works for several clients operating in the area. He holds a monthly periodic tenancy and, according to its terms, Edgar is required to pay rent of \$55,000 per month to Amy. The rent is payable in advance and is to be deposited into Amy's account (the account details are set out in the Schedule to the lease), on the first day of each month. The lease also provides, *inter alia*, the following:

The Tenant shall:

...

1.6 *Use the premises solely for the purposes of operating the office of a graphic artist/designer providing creative services and matters incidental thereto;*

...

The bookshop and café have been quite successful and Amy has enjoyed good relationships with her tenants. Despite her success, however, Amy had wanted, for a long time, to put her training to greater use by offering some kind of residential guest accommodation. An opportunity presented itself last November when Amy's friend, Beatrice, told Amy about a property she had seen advertised for rent on her office noticeboard.

The property comprises an acre of land, and has a large Victorian house (Main House) and cottage (Cottage) situated on it. Beatrice convinced Amy to set up a meeting to view the place, and Amy made arrangements to meet Carlos, the owner, at the property.

The property is situated in a rural community which is approximately 30 minutes' drive from a bustling town situated at the foot of the incline leading to the rural community. Amy and Beatrice found the property easily on the day agreed, and they met with Carlos.

The property, which Carlos calls "Cool Breeze", is surrounded on each of the northern, western and eastern sides, by a coffee walk. There is a large expanse of land leading from the back of the Main House to a river, which forms the southern boundary. The lots immediately adjoining Cool Breeze on the western and eastern sides are also owned by

Carlos. They are managed by his employees, and all three of the lots (including Cool Breeze), extend to the river.

Amy was immediately impressed by the property, and, after walking through the Main House and Cottage, and across parts of the grounds, felt confident that she could use the property for the purposes of operating a guesthouse and spa.

Carlos confirmed that there were no zoning restrictions in the area.

The Main House has six bedrooms, each with its own bathroom, suitable for use as guestrooms; and a self-contained basement, comprising a bedroom, bathroom and small kitchen, which could be used as Amy's own residence. The basement conveniently has its own access door, and windows on two sides, which is good for ventilation. The ground floor has two large rooms on either side of the main staircase which Amy thought could be used, respectively, as a large dining room, and spa. Both of these rooms are rear facing, have bay windows and doors which open onto a large veranda, and overlook the sloping land and river below.

The Cottage has three bedrooms, each having its own bathroom, a large entertainment room and kitchen. Amy thought she could use the Cottage for families, or groups of friends who wanted a larger space for themselves.

Amy told Carlos that she was interested in renting the property for the purposes of operating a guesthouse and spa, and as her personal residence, along the lines set out above. She said she wanted it for a term of seven years from November 15, 2019, but that she also wanted to have the option to renew it for a further term of seven years. Also, out of an abundance of caution, Amy said that she wanted to have the right, at any time during the initial or renewed term, to terminate the lease, if she felt this was in her best interests.

Carlos was fine with all of this. He said, though, that if Amy wanted to exercise the option to renew the lease for a further term, or the option to terminate it early, she must give him at least three months' written notice.

Carlos did not require a provision allowing him to terminate early.

Carlos also said that the premises would be rented "as is" and that Amy would be responsible for keeping the premises in repair. He also said he would require a monthly rent of \$80,000 per month payable in advance on the first of each month; and that Amy must pay a security deposit of \$320,000 on or before the commencement of the lease.

The day following their discussion, Carlos instructed his attorney-at-law to prepare a lease on the terms agreed with Amy; the lease was prepared and Carlos and Amy both signed it as a deed. Amy paid Carlos the security deposit and first month's rent and Amy took possession of the property on November 15, 2019.

After cleaning up the property and furnishing the Main House and Cottage, Amy opened to a fully booked property on December 1, 2019. She generally enjoyed very good

business since opening, with the property being fully booked most nights, although, for the period of approximately three months between the third week of March and the second week of June, 2020, she was closed for incoming business due to government restrictions arising from the COVID-19 pandemic. During the period of restrictions, she continued to provide paid accommodation and services for a few guests who had been unable to leave the jurisdiction before airports closed, and so remained at Cool Breeze.

Amy offers nightly and weekly rates, in an effort to cater to the varied needs of her guests. Most guests stay for periods of between two and four weeks. She does, however, generally limit the maximum stay to eight weeks at any one time.

Amy offers breakfast as part of the package for accommodation. Lunch and dinner are available at an additional cost. Breakfast is provided in the dining room, and, if requested the night before, may be served to guests in their rooms in the Main House or the Cottage. All the Main House guestrooms and bathrooms, and the Cottage, are cleaned daily by Amy's employees.

Recently, however, Amy has been having several problems, and has come to see you about them. She instructs you that:

- She has noticed the stripping of paint from part of the ceiling and down the middle of one of the vertical walls in the main dining room. There is also evidence of water seeping from the ceiling and the affected dining room wall in the same areas. Amy called a plumber who had been recommended by Carlos. Following his (the plumber's) inspection, he said that the problem appeared to be the upper floor's main waste pipe. That pipe, he said, received the waste from the branch pipes from each of the six bathrooms connected to the guestrooms, and ultimately carried the waste out of the Main House. The pipe had disintegrated and would have to be replaced. This would require the cutting of the concrete flooring in the upstairs walkway (dining room ceiling) and the affected vertical dining room wall, to remove the fragments of the existing pipes and, the installation of new pipes. The plumber said that all the pipes in the house would eventually need to be replaced, but that this was not yet necessary, since the only problem at the moment was the one identified. The others could be dealt with as they arose.

The plumber said it would take three days to remove and replace the pipes as described. During that time, the guestrooms ought to be vacant and part of the dining room closed off.

When Carlos heard what the problem was, he demanded that Amy replace all the pipes, since she undertook as a term of the lease, to:

keep the premises in good and tenantable repair and at the end of the lease, to yield up the premises in such repair.

Amy is distressed by Carlos' demand.

- Yesterday, the Frank family who had booked the Cottage for four weeks did not check out at 1:00 p.m., as scheduled. When, at 2:00 p.m., Amy did not see the Franks check out, she went to the Cottage and asked Mr. Frank about this. At that time he asked whether they could stay another night. Amy allowed them to do so, provided that they checked out by 10:00 the following morning, which he agreed they would do.

Amy was not worried about the accommodation fee for the additional night, because the scheduled accommodation (four weeks) had been paid for in full at the time of check-in, and Mr. Frank's credit card had been charged for incidentals in a sum equivalent to one week's accommodation (as was the policy), pending full release on check-out if there was no loss or damage to the Cottage.

In addition, she had no scheduled booking for the Cottage for another three days, when the Grover family were scheduled to arrive for an eight-week stay. If the Franks left the following morning, this would allow her employees two clear days to clean and otherwise prepare the Cottage for the Grover family, who were scheduled to arrive from Australia.

Amy became very concerned, however, when at 10:30 this morning, she saw no sign of the Franks. She went to the Cottage and Mr Frank said that they had decided to stay for another week, which they were legally entitled to do, as tenants.

Amy is distressed because the Grover family is booked to arrive in two days, and Mr. Frank seems determined to remain for an additional week.

- Sometime last month, Amy noticed unusual activity in the area. Specifically, she said she saw a group of about six people on three separate occasions, walking along the riverbank, and the parochial access road to the three adjoining properties owned by Carlos and, on one occasion, through the coffee walk east of Cool Breeze.

Amy did not immediately raise the matter with Carlos but when Carlos came to collect the rent this month, Amy asked him about the activity she had seen a couple of weeks earlier. Carlos said he was glad Amy had raised the matter because it was something he had wanted to discuss with her.

He explained that the people Amy had seen were interested in buying the land. He said they were interested in all three adjoining lots, including Cool Breeze, and that their particular interest was in growing the coffee business and establishing a coffee-themed attraction. He said they planned to house the attraction at Cool Breeze, and maintain the coffee walk on each of the other two lots. Carlos said that the offer price was equivalent to two times the last independently assessed market value of the properties, and one he could not refuse. He said that the offer was conditional on the acquisition of the requisite statutory approvals to establish and operate the attraction; and that the prospective purchasers were in the process

of applying for the approvals. Carlos also said that he told the prospective purchasers that Cool Breeze was tenanted and that if they bought the property they would have to give a clear month's notice to the tenant if they wanted her to leave the property.

Amy is very concerned that she might lose Cool Breeze, which is her home and principal business, in a matter of a couple months.

In addition, to the concerns that Amy has already raised she is also having problems with her tenants in the capital.

Amy further instructs you as follows:

She has not received rent from Edgar for two months. She says that when she did not see the rent for September 2020 in her account, she telephoned Edgar to ask him about it. Edgar apologised and explained that business had slowed recently, and he asked for additional time to pay. Amy did not pressure him because he had been a good tenant over the years. However, on October 2, 2020, when she did not see either the arrears for September, or October's rent, in her account, she became very concerned. Her concern grew when she was unable to reach him by phone.

Amy telephoned Hosea, who had been managing the bookshop and café for her, to find out whether he had seen Edgar over the last few days.

Hosea said that he hadn't seen Edgar for several weeks but that two weeks ago he saw deliverymen carrying two heavy duty printers/photocopiers up to Edgar's office. Since then he had seen two people coming to, and leaving Edgar's office at 8:30 a.m. and 4:30 p.m., respectively, every day. He also saw other people coming and going to Edgar's office during the course of each day.

He said further, that the day before, he overheard Saul complaining, in the café, that all day long, strange people are on the staircase going to and from Edgar's office and looking into his (Saul's) windows as they passed his office. He said that Saul also complained that there had been a lot of noise coming from Edgar's office recently, seemingly from some kind of printer, and that the noise has been preventing him from writing.

Hosea surmised that Edgar had begun to offer printing services from the office.

He said that he had not raised all this with Amy because he wasn't sure of what was happening, and in any event, he thought that Edgar would have discussed any changes with her.

Hosea did say, however, that, following Saul's complaints the day before (yesterday), he had planned to call Amy because Saul sounded quite upset and seemed ready to take legal action against both Amy and Edgar.

Having heard all that Hosea said, she decided to stop and see Edgar on her way to your office. When Edgar opened the door, Amy immediately saw the two large printers/photocopiers, two people operating them and about four people who appeared to be waiting on printed documents. When she asked Edgar about their agreement to use the premises for his office as a graphic artist/designer, he said that demand for his creative work had declined during the last few months and that he started the printing business to 'keep him going' until the demand for creative work 'picked up again'.

Amy told him that he was acting in breach of clause 1.6 of their agreement and that he was also disturbing her other tenant, Saul. She said he was required to cease the printing business. Edgar claims that Amy cannot prevent him from using the office for any lawful purpose.

When asked about the rent, Edgar said he could give Amy a cheque for the two months' arrears, but Amy refused, insisting that he deposit the rent into her account as agreed.

Amy is very concerned about the overdue rent; Edgar's posture on the question of the printing business; and the complaints that Saul has apparently begun to make. She is also considering whether it is time to bring her relationship with Edgar to an end.

Required:

In relation to each of the following, advise Amy as to her legal rights and obligations, any potential liability or remedies that she may have, and how she ought to proceed, as appropriate, in the circumstances, given the concerns she has raised:

- (a) the pipes, based on her undertaking as to repair as set out in the lease with Carlos;
- (b) the Franks' occupancy and their refusal to leave the Cottage;
- (c) the proposed sale by Carlos of Cool Breeze and the other two properties, given her lease and the option contained in it;
- (d) Edgar's actions in starting the new printing business, and Saul's complaints; and
- (e) Edgar's failure to pay rent and his offer to pay by cheque.

Note:

Your answer must not exceed **4000 WORDS**.

END OF PAPER