

**COUNCIL OF LEGAL EDUCATION**

**NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE**

**FIRST YEAR SUPPLEMENTAL EXAMINATIONS, 1999**

**LANDLORD & TENANT**

**(Monday, August 9 , 1999)**

**Instructions to Students**

- (a) Time: 3½ hours
- (b) Answer **FIVE** QUESTIONS.
- (c) In answering any question, a candidate may rely 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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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

**QUESTION 1**

Leslie, the owner of two lots, Blackacre and Greenacre, in January 1995, allowed her nephew Sean, to occupy Blackacre, 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 Sean 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 forever." Acting on this, Sean constructed a small cottage on Blackacre.

On April 1, 1996, Leslie entered into an agreement in writing with Tanya to lease to her Greenacre for the term of "one, three, five or seven years" for the annual rent of \$1200 payable in advance in equal monthly instalments. Tanya uses Greenacre as a vegetable garden. On September 6, 1998, Tanya served notice on Leslie that she intends to quit on April 1, 1999. On April 1, 1999, Tanya, unable to find a suitable alternative property, tenders the rent which Leslie accepts.

On May 10, 1999, Leslie died leaving her properties on trust for sale and her executors, who desire to sell the properties, seek your advice on the rights of the respective occupants.

Advise them.

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**QUESTION 2**

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 sublet 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 Mustafa, 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 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, Mustafa and Mohamed have taken possession of their respective shops.

All of the above 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 3

Rajah, a quiet and respectable gentleman, entered into a written agreement for a five-year lease of an unfurnished town house which is part of a complex owned by Bernice. The agreed rent was \$1,500 per month and in addition to the usual covenants, Rajah was entitled to the use of a common area consisting of a swimming pool and garden. Rajah paid \$100 per month towards the cost of maintenance of these facilities.

After he had been in occupation for six months, Rajah refused to pay the maintenance charges, complaining that Neville, the tenant of another of the town houses, monopolized the common facilities. Rajah alleged that Neville and his friends spend every weekend at the pool, and that they have installed a grill in the gardens near the pool to jerk chicken and pork. He claimed that the odour emanating from the grill is offensive and in breach of the covenant for quiet possession.

Bernice who was very anxious to maintain the standards of her property, served Neville with a notice to quit. Neville refused to leave.

Soon after, Bernice, unable to cope with the problems of maintaining the property, transferred it to Properties Ltd. Properties Ltd. are anxious to start afresh and consult you with a view to evicting Rajah and Neville.

Advise Properties Ltd.

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#### QUESTION 4

East demised office premises to West for ten years from March 1, 1995, by a lease wherein West covenanted -

"not without the previous consent of the landlord to assign sublet or part with possession of the demised premises or any part thereof."

With East's consent, West assigned part of the premises to Terry who thereafter paid half the rent reserved by the lease although no formal apportionment was ever agreed between the parties. Also, with East's consent, West sublet the remainder of the premises to Sybil.

West has now failed to pay his half of the rent due in advance on June 1 for the quarter then commencing (although he has been paid the rent due from his sub-tenant, Sybil). Terry, last week sublet one room to Bland, but failed first to seek East's consent. Bland is of impeccable character and is financially sound. East has just discovered this subletting.

East would like to evict all the occupiers and sell the property with vacant possession but he wishes to know what are his chances of being able to do so.

Advise him.

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### QUESTION 5

By a lease under seal made between Sandy and Henry, Sandy leased premises known as No. 1 Short Road to Henry for a term of five years commencing from the May 1, 1997, at a monthly rental of \$5,000 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 \$50,000 on signing hereof the lessee shall be granted the option to purchase the demised premises for the sum of \$800,000 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 lessees shall have the right of first refusal to lease the demised premises for a term of five 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 lease Henry paid to Sandy the sum of \$50,000 in consideration for the option. At the expiration of the term, Henry demanded a

renewal of the lease for a further term of five years at the same rental and one month later tendered a cheque for the sum of \$805,000 saying "This is for the rent for May and the purchase price."

No. 1 Short Road now has a market value of \$1.75 million and Sandy has received an offer from Richie to lease the premises for ten years for \$10,000 per month.

Advise Sandy.

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#### QUESTION 6

In 1996 Foote let a two-room house on a one hectare lot (not subject to rent restriction legislation) to Derthal to be used as a dwelling house at a monthly rental of \$2500 payable on the first day of each month.

In 1997, with Foote's knowledge, Derthal constructed two additional rooms on the premises which he used as a bakery and pastry shop.

In May 1999, Foote sold the premises to 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.

- (i) Advise Derthal.
- (ii) Would your answer be different if Foote had served notice to quit before he sold the premises.

**QUESTION 7**

Happy-Deal Ltd., furniture dealers, sold on hire-purchase terms, a "Delux Super-sof" water-bed valued at \$16,000 to Kay who is the tenant of an apartment owned by Harry the rent of which is \$4,000 per month. 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 \$12,000. 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.
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**QUESTION 8**

(a) In assessing the standard rent of two apartments in a complex owned by Luther, the Rent Assessment Officer/Board decided that the sums paid by the tenants for the maintenance of common areas should be deducted from the final calculation of the standard rent.



Luther wishes to contest this decision and has sought your advice.

Advise him.

(b) Trixie has occupied along with her six children, a three bedroom house since October 1987 (the home is subject to Rent Restriction/Control Legislation).

The landlord, Lamberto, who lives abroad has left an agent in charge of the premises. The agent has omitted to collect rent for six months and Trixie who cares for the house as if it were her own, spent a substantial sum of money on repairs and general maintenance. Her children all go to school nearby and she has established a very reputable dress-making business on the premises.

In January 1999, Lamberto wrote to Trixie informing her that his son Pedro was very anxious to set up his practice at the house since he had always hoped to come home and serve the community.

In June, Lamberto gave Trixie one month's notice to quit on the ground that the premises are required for the use and occupation of his son.

Advise Trixie who does not wish to vacate the premises.

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