

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 2004

LANDLORD AND TENANT

(FRIDAY, AUGUST 6, 2004)

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.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Through a series of correspondence, Denton agreed to lease Kareem his 2 bedroom apartment for 5 years commencing on January 1, 2000, at an annual rent of \$12,000 payable by equal monthly installments. They also agreed that Kareem would paint the inside of the apartment once per year and that Kareem would have the option to renew the lease if he indicated this desire to Denton in writing at any time before the expiration of the 5 years.

Kareem entered possession on January 1, 2000, and has been paying his rent, as agreed, on time. He has also painted the inside of the apartment every Christmas.

Last month Kareem gave a letter to Denton indicating that he wished to renew the lease for another 5 years. Denton's response was "What lease?" The lease had not been perfected.

On May 1, 2004, Denton served a one month's notice to quit on Kareem referring in the notice to Kareem's "monthly tenancy".

Kareem comes to seek your advice. He wants to have the lease executed and he wants to stay on in the apartment for another term of 5 years.

Advise Kareem.

## QUESTION 2

Miss Tessa Thompson has come to see you. She tells you that in July 2002, she became the occupant along with another person of an apartment in Happy Meadows. The apartment consists of two bedrooms, a kitchen and a bathroom. She executed a document which she hands over to you, the terms of which are as follows –

"Lincoln Lewis (hereinafter called "the owner") of the one part and Tessa Thompson (hereinafter called "the licensee") of the other part. Whereby it is agreed as follows:

The owner grants to the licensee the right to use in common with others who have been granted the like right the premises known as Apt. 3 ... together with the fixtures, furniture, furnishings and effects now in the said rooms for 12 months from July 1, 2002, and thereafter until determined by either party giving to the other one month's notice in writing to take effect at any time.

1. The licensee agrees with the owner as follows:

- (1) To pay the sum of \$5,000 per month for the right to share in the use of the said rooms such sum to be payable by equal monthly installments in advance on the first day of each month, the first of such payments to be made on the signing thereof.
- (2) Not to damage or cause any damage to the walls or floors of the said rooms or the apartment or any other part thereof and to preserve the fixtures, furniture, furnishings and effects from being destroyed or damaged in any way and to replace all broken glass.
- (3) Upon the termination of this licence (whether by effluxion of time or otherwise) to pay to the owner a sum equal to half of the cost of washing and cleaning all linen, counterpanes, blankets and curtains soiled (whether or not by the licensee) during the period of this licence.

(4) Not to impede the use of the said rooms or any of them nor, upon terms that each shares the cost of the gas, electricity and telephone services, to impede the use of any services supplied to the said rooms or any of them by such other persons not exceeding one in number to whom the owner shall grant licence.

(5) Not to do or suffer to be done in or upon the said rooms or cause annoyance in the said apartment or do any act or thing which may be a nuisance damage or annoyance to the owner or to the tenants or occupiers of other parts of the building of which the apartment forms part or to the occupiers of any adjoining property or which may vitiate any insurance on the apartment against fire or otherwise or increase the ordinary premium thereon.

2. Provided as follows:

(1) If the said sum or any part thereof shall be in arrears or unpaid for at least 14 days after the same shall have become due or

(2) In the event of any breach by the licensee of the agreements herein contained then the owner may terminate this agreement and the licensee's rights hereunder shall absolutely determine but without prejudice to any other remedies of the owner hereunder.

(3) The owner agrees with the licensee to pay all general and water rates payable in respect of the flat but not any charges for the supply of gas or electric current or for the use of the telephone.

3. The licensee has paid the sum of \$5,000 which shall be retained by the owner until the termination of this agreement as a deposit to secure to the owner the performance of the licensee herein contained but without prejudice to the owner's rights under and in respect of this agreement. At the termination of this agreement and on the licensee vacating the said rooms and subject to the proper performance by the licensee of his obligations herein contained the owner will refund the said deposit to the licensee.

4. The licensee may terminate this agreement and vacate the flat at any time on seven days prior written notice.

Those are the terms of this agreement."

Miss Thompson tells you further that the other occupant with whom she had shared and who executed a similar document left the apartment three months ago. Last week she received a notice from the landlord giving her two weeks to vacate the premises.

She now seeks your advice as to the effect of this document.

Advise Miss Thompson.

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### QUESTION 3

On November 1, 2003, Gwyneth, pursuant to an oral agreement with Mark, rented his furnished dwelling house at a monthly rent of \$700. On that day, Gwyneth and her elderly father moved into the house. The house is not subject to rent restriction legislation.

In the evening, Gwyneth noticed that every time she flushed the toilet it would overflow onto the floor and sewage was seeping out from it. The floor near the tub was rotting. Later Gwyneth tried to open the windows in the living room and both windows fell out. She called Mark at his home but Mark was very unsympathetic to her plight.

Two days later, her father developed an uncontrollable cough. On closer inspection, she noticed that the walls were damp and lightly covered with mold.

You are consulted by Gwyneth who tells you that she paid Mark two months' rent in advance. She cannot afford to move anywhere else and wants Mark to remedy the defects and effect the necessary repairs.

Advise Gwyneth.

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#### QUESTION 4

By deed dated February 3, 2003, Percival leased 3 acres of riverside property to Edward for a term of 20 years for the purpose of establishing a guesthouse and spa. In the first year of operations, Edward has built up a loyal clientele and a good reputation.

Last month, Edward noticed that the adjacent property, also owned by Percival, was being cleared. Heavy duty equipment would pass day and night across the entrance to the spa. Sand, gravel and dust would be left in their wake and was strewn along the way up the guesthouse and spa. After some particularly heavy rains, some big ruts were left in front of the entrance to the spa. Only clients with SUVs could access the property. In addition, the noise and dust coming from the works on the adjacent property made it impossible to conduct business. Edward watched his business steadily decline.

Last week, Edward decided to take a walk around his property. He noticed that there had been some slippage on the eastward side which was the side adjacent to the property being cleared. Edward telephoned Percival who informed him

that last month he leased that property to an overseas company for the purpose of mining operations.

Edward is appalled. He comes to seek your advice. He wants to know what actions he can take against Percival. He does not want the operation next door to continue because it will ruin his business.

Advise Edward.

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### QUESTION 5

Comco Ltd., a supplier of petrol and petroleum products, granted Zim Ltd. a twenty-one year lease of a petrol filling station.

The lease contains, *inter alia*, the following:

- (i) a covenant by the tenant to pay the rent quarterly in advance;
- (ii) a full repairing covenant including structural repairs by the tenant; and
- (iii) a covenant stipulating that the tenant should purchase all of its petrol supplies from the landlord.

Last year (2003) Zim Ltd. was unable to pay any rent due to financial difficulties and so on January 1, this year (2004) assigned the remaining ten years of the lease to Deli Garages. Comco Ltd. consented to the assignment but was not a party to the deed of assignment.

On July 1, this year (2004) Comco Ltd. sold their reversion to B. P. Oils.

Deli Garages has refused to pay the second quarter's rent to B. P. Oils because it claims that the premises are in need of repairs and they have also refused to accept supplies of petrol from B. P. Oils.

B. P. Oils now wishes to:

- (i) recover the year's unpaid rent from Zim Ltd.;
- (ii) recover the second quarter's rent from Deli Garages;
- (iii) enforce the repairing covenant against Deli Garages;
- (iv) enforce the covenant to supply petrol to Deli Garages.

B. P. Oils have now consulted you. Advise B. P. Oils.

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### QUESTION 6

On June 1, 1995, Babsy granted a lease of her house to Portia for 10 years at an annual rent payable at the end of the year. The lease contained the following covenant:

*"That the landlord will whenever requested to do so by the tenant grant to her a lease of the demised premises for a further term of 10 years at the same rent and containing the same covenants and provisos as are herein contained provided that all covenants are duly performed and observed."*



On June 1, 2002, Portia with the consent of Babsy assigned her interest in the house to Omar. On February 28, 2004, Omar wrote to Babsy requesting a renewal of the lease but by letter dated May 2, 2004, Babsy informed Omar that it was her intention to move back into the house at the end of his tenancy.

You are consulted by Omar who would like to know whether he is entitled to a renewal of the lease and, if so, whether he could insist on the inclusion of a covenant in the exact terms of the above stated clause. He has paid all the rent due to date.

- (a) Advise Omar.
  - (b) What would your advice be if the lease contained a covenant by the tenant to repair the house and since December 2002, the house has been in a state of disrepair?
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### QUESTION 7

By lease dated May 1, 2000, Michael became the tenant of a two-storey building owned by Stuart. The lease was for 7 years at an annual rent of \$24,000 payable by equal monthly installments. From the date of the lease Michael had been living on the upper floor with his daughter, Gina, an accountant. Michael is a tailor and he carries on his business on the ground floor. He has not paid rent for the past 8 months.

Two days ago, ScrewFace, a bailiff acting on Stuart's behalf, entered the ground floor of the building through an unlocked door. He announced that he was there because Michael had not been paying his rent. He proceeded to seize an

industrial-sized sewing machine which had been bolted to the floor, a button-maker, four bolts of fabric, some pants on display for sale and two suits belonging to Ashton that were being altered by Michael.

ScrewFace then proceeded upstairs where he seized a refrigerator, stove, bed, computer and painting. The computer and painting belong to Gina. On his way out, ScrewFace seized Michael's station-wagon. He informed Michael that he was securing everything at the Government warehouse.

Michael was surprised to see his nephew drive up in his station-wagon the following evening. His nephew said that he had seen it parked outside a house of ill-repute.

Michael seeks your advice as to the validity of the distress and whether he can recover the property seized. He also wants to know whether he and his nephew will be in trouble for taking back the station-wagon.

Advise Michael.

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### QUESTION 8

John Jones, the owner of premises subject to rent restriction/control legislation and known as Lot 6 Exuma Row, has just returned from abroad having won ten million dollars on the lottery. He has decided not to work for the rest of his life and to live frugally.

While abroad, he had let his premises at Lot 6 Exuma Row, which consisted of three rooms, to Tom Smith, a tiler, who occupied it with his wife and four children,

at a rental of \$5,000 monthly although the maximum permitted rent was \$6,000 monthly.

Since his return John Jones has been trying unsuccessfully to persuade Smith to leave the premises so that he can occupy it with his wife and child. He has offered to find Smith alternative accommodation in two areas of the city but Smith says that one is in a high crime area and in the other there is no running water in the house and he is not prepared to use the standpipe provided for persons living in the area. Jones further offered Smith \$10,000 if he would leave but Smith has refused it. Jones now informs Smith that if he wants to stay he will have to pay a monthly rental of \$6,000 whereupon Smith replies that he has no intention of paying any rent exceeding \$5,000 monthly.

Jones has now served Smith with a notice to determine the tenancy.

What are the chances of Jones being able to recover possession of his premises?

Advise Jones.