

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR SUPPLEMENTARY EXAMINATIONS, 2008

LANDLORD AND TENANT

(TUESDAY, AUGUST 12, 2008)

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

Delroy is the owner of “The Moon”, a property with a main house and a cottage thereon. (The property is not subject to rent restriction legislation).

- (i) In 1998, Harvey was employed by Delroy as his driver and estate supervisor for “The Moon”. Harvey was paid a weekly salary and as part of his remuneration for his services he was permitted to use a flat attached to the main house at “The Moon” as his residence. Delroy’s nephew has recently come to live at “the Moon” and so Delroy no longer wishes to continue the arrangement with Harvey, as his nephew is very helpful with driving him around and helping to manage the estate.

- (ii) Delroy entered into an oral agreement with Lisa for the latter to occupy the cottage from January 2006. Lisa occupied the cottage for two years but thereafter she ran into financial difficulties. To resolve her problems she verbally agreed to let her girlfriend Stacy live in the cottage for a few months and for Stacy to pay the rent to Delroy. He verbally consented to Stacy taking Lisa’s place for a few months. However, six months have now passed and Lisa has not returned. Delroy wishes to put an end to this arrangement because he does not like Stacy’s boyfriend who frequents the cottage. He therefore visited the cottage recently and placed a padlock on the front door.

Delroy has sought your advice with respect to the matters at (i) and (ii) above.

What is your advice?

QUESTION 2

Prepare a memorandum to an attorney-at-law who has consulted you on behalf of a prospective tenant, and 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, sublet or part with possession of the demised premises or grant any licence thereto without the prior consent in writing of the landlord;
 - (ii) that the tenant should insure the premises for the benefit of the landlord;
 - (iii) that the tenant shall use the premises as professional offices only;
 - (iv) that the tenant shall have an option to renew the tenancy at the end of the term thereof.
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QUESTION 3

For five years, Dave has been the monthly tenant of a studio apartment in a complex owned by Jackie. Jackie was also the owner of an adjoining complex. Recently, Jackie joined the two complexes together and converted them into a hotel. The use of the building as a hotel has resulted in the residents and the general public coming and going as participants at various social activities. These include the regular use of the swimming pool and the disco which is not adequately sound-proofed.

This has caused Dave to complain frequently to Jackie about the noise and disturbance caused by the residents when they return to their apartments late at night as well as from the social events which also occur at night at the hotel.

Dave (who is still a monthly tenant) recently came to see you on the brink of a nervous breakdown. He wishes you to advise him in this matter.

Advise Dave.

QUESTION 4

Anchor, for the past eight years, has been the tenant of a dwelling house on Rapsey Street. The house was in very good condition when Anchor took possession. In 2005 a storm blew off some shingles from the roof. Anchor could not afford to replace them and the landlord Smiley who lived abroad was not aware of the damage.

In January 2007 after two days of rain, water seeped into the living room, but there was no further evidence of leakage because of a long drought that followed.

In December 2007, Smiley sold the house to Jack who inspected the premises prior to completion of the sale.

In April 2008, severe cracks began to appear in the front wall of the living room and Jack's friend who is a builder informed him that the cracks were as a result of the damp which had seeped into the wall and the drought that followed.

Anchor wishes to remain in possession of the dwelling house but is anxious to have the defects remedied and is of the view that it is the responsibility of Jack to do so.

Jack, however, is of the opinion that he is not responsible for such repairs and had Anchor kept the house in a tenant-like manner, the damage would not have occurred.

Further, Jack informs you that it was a term in the agreement between Anchor and Smiley that Anchor would insure the premises against fire, hurricane and flood.

Advise Jack.

QUESTION 5

On June 1, 2006, Pedro granted to Carlos a lease of a two-storey building, for ten years, at an annual rent of \$120,000 payable by monthly instalments at the end of each month. The lease contained the following covenants by the tenant –

1. To pay the rent reserved at the times and in the manner agreed.
2. Within six months of the commencement of the term at his own expense, to build a concrete fence five feet high around the demised premises.
3. To use the premises as a private dwelling house.

4. To keep the demised premises at all times insured against loss or damage by fire.

The lease also reserved a right of re-entry for breach of covenants.

Pedro recently advised you that the fence has not been built despite the fact that on November 30, 2007, Pedro spoke to Carlos requesting him to build the fence.

On May 1, 2008, Carlos sublet the upper floor to Antonio who from that date has used this floor as a recreation club. Carlos last paid rent on June 30, 2008.

Advise Pedro whether he can forfeit the lease for -

- (i) failure to build the fence;
- (ii) the use of the premises as a recreation club;
- (iii) failure to insure;
- (iv) breach of covenant to pay rent;

and if so, what steps he should take in each case to enforce forfeiture.

QUESTION 6

By a deed dated December 31, 2006, Verleta granted a lease of a 50 acre farm (of which she was the owner in fee simple) to Harrie for 30 years commencing January 1, 2007. The lease contained a covenant by the lessor that –

“If the lessee at any time during the term hereby granted shall give the lessor six months notice in writing that he desires to purchase the reversion in fee simple in the demised premises, the lessor upon the expiration of such notice and on payments of the sum of \$2.5 Million and of all arrears of rent up to the expiration of such notice shall convey the demised premises to the lessee in fee simple free from encumbrances.”

On April 7, 2008 Verleta sold and conveyed the farm to Owen in fee simple and on June 2, 2008 Harrie assigned his lease to Mitya.

Mitya now wishes to purchase the fee simple in the farm.

- (i) Advise Mitya.
 - (ii) What would your advice be if, instead of the above-mentioned covenant, the lease contained a covenant giving Harrie an option to renew for a further term of 30 years?
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QUESTION 7

On June 10, 2005, Rumona granted to Tamara, a medical practitioner, a lease of premises with two buildings thereon, the main house and a cottage, at a yearly rent of \$48,000 payable at the end of every year. Tamara occupies the main house as her residence and the cottage as a doctor’s office. In August 2007, Tamara paid the rent only after Rumona threatened to break down the door and seize her surgical and other equipment. The rent payable this year is still due

and unpaid, in spite of several requests by Rumona for payment. Rumona has now consulted you and said she would like to levy distress on the following –

- (i) some medical text books in the cottage;
- (ii) two beds and living room furniture in the main house;
- (iii) some paintings in the main house kept in place on the walls of the building by screws;
- (iv) whatever cash is found on the demised premises;
- (v) a motor car, owned by Tamara, now parked in the yard of Tamara's friend Hal. (Rumona discovered that this vehicle was removed by Tamara from the garage of the main house and taken to Hal's residence so that Rumona, should she decide to levy distress, would not find it on the demised premises).

Advise Rumona.

QUESTION 8

On May 16, 2001, Nicholas granted a lease of his dwelling house together with an annex to Danny for five years at an annual rent payable by monthly instalments in advance. The premises are subject to the provisions of rent restriction legislation.

By the lease Danny covenanted not to assign the premises or any part thereof without the landlord's consent. On November 9, 2005, Danny granted a weekly

sub-tenancy of a room in the house to Arlene and on November 30, 2005, he assigned the annex to Boysie in both cases without Nicholas' consent.

On December 8, 2005, Danny by letter informed Nicholas of the subletting to Arlene and the assignment to Boysie. Nicholas replied stating that he would hold Danny responsible for the payment of the rent for the entire premises. Danny last paid rent on December 6, 2007.

Danny died intestate on June 4, 2008. He is survived by his wife, Stella, who resided with him in the house and who continues to occupy the house.

On June 5, 2008, Nicholas informed Stella, Arlene and Boysie that he expected them to give up possession on June 15, 2008, the day on which Danny's lease was due to expire. They have refused to leave stating that they are protected tenants.

Advise Nicholas.
