

NORMAN MANLEY LAW SCHOOL

COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1990

LANDLORD AND TENANT

(Friday, May 25, 1990)

Instructions to Students

- a) Time: 3½ hours
  - b) Answer FIVE questions.
  - c) In answering any question a student 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.
  - e) It is unnecessary to transcribe the questions you attempt.
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QUESTION 1

(a) The decision in Street v Mountford is merely a test of a draftsman's ability, where appropriate, to avoid the creation of a tenancy. Discuss.

(b) Samantha Serious, a medical student, along with two other students, separately and on different dates entered agreements to occupy a three-bedroom house on a monthly basis. Samantha's agreement stated inter alia -

"THIS AGREEMENT is made the 25th day of September 1989, BETWEEN CLEVER GUY of 25 Boardwalk, Central P.O., Builder, (hereinafter referred to as "the Owner") of the ONE PART and SAMANTHA SERIOUS of Queen's District, Queens, P.O., medical student, (hereinafter referred to as "the Licensee") of the OTHER PART whereby it is agreed as follows -

1. The Owner grants to the Licensee 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" Main Street, St. Michael, 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 nine months from the 1st day of October 1989, and thereafter until determined by either party giving to the other one month's notice in writing to take effect at any time.

2. The Licensee agrees with the Owner as follows:-

- (1) to pay the sum of \$800 per month for the right to share in the use of the said house, such sum to be paid by equal monthly instalments on the first day of each month. the first payment to be made on the 1st day of October 1989.
- (2) 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,
- (3) 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 owner has granted or shall from time to time grant licenses to use the said house in common with the Licensee 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.

- (4) If at any time there are less than two persons authorised by the Owner to use the said house in common with the Licensee, upon reasonable notice given by the Owner, to meet with any prospective licensee nominated by the Owner at the house, to provide an opportunity to such prospective Licensee to agree terms for sharing the costs of services in accordance with clause 2(3).
- (5) Not to assign this agreement nor permit any other person except as licensed by the Owner to sleep or reside in or share occupation of the said house or any part of it at any time.

3. Provided as follows:-

- (1) If the said sum or any part thereof shall be in arrear 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 by notice forthwith determine this agreement but without prejudice to any other remedy of the Owner.

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

Samantha has been given one month's notice to quit the house to take effect on the 25th June 1990. She now seeks your advice as to whether she is in occupation as a tenant or licensee.

What is your advice? Give reasons.

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QUESTION 2

Draft an appropriate reply to the following letter -

" Dear Attorney,

Let me thank you for dealing so promptly with my Uncle's estate.

I now need your advice, however, with respect to the apartment which my Uncle left me.

It is my hope that upon my retirement I shall return to the country and live in the apartment. Unfortunately, I am not certain at this stage whether I will opt for an early retirement in five years time, or go the full ten years. In the meantime, I wish to lease it fully furnished, but you will need to advise me as to the most appropriate period or periods having regard to my uncertainty as to retirement.

I have been told by a friend that it will not be necessary for me to enter into a formal lease. Please advise whether this is in fact correct and if not, please indicate the matters that would normally be included in such a document.

Thanking you,

Yours sincerely,

( Ann Lucky )."

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QUESTION 3

At the end of July 1989, Victor purchased a dwelling house which is exempt from rent restriction/control legislation. The house has been occupied under an oral monthly tenancy for some ten years by Missy who has used it as a residence for herself and her three teenage children. Missy has also, since 1987, run a day care centre in an outhouse which she constructed in a corner of the garden. In mid July 1989, Missy went on holiday and instructed her eldest son to pay the rent in cash, to the new landlord, when it became due on the first of the month.

On her return on the 16th September, 1989, Missy discovered that the rent for August and September had not been paid and immediately delivered a cheque for the arrears to Victor's wife at his residence.

On September 17, 1989, Missy received from Victor a notice to quit in a month's time for arrears of rent. Missy is very distressed at this turn of events as she had hoped to remain in occupation for many more years. She has sought your advice.

What is your advice. Give reasons.

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QUESTION 4

J. R. Ewing, the owner of contiguous properties at No. 22a and 22b High Street, rented No. 22a to Dr. Trapper John to be used as a surgery. Six months later he rented the premises at 22b to Remington Steel to operate a detective agency. Both tenancies contained expressed covenants not to assign or sublet without the consent of the landlord

Trapper John, who enjoyed a thriving and prestigious medical practice during the first six months of the tenancy, noticed that his practice began to decline after the letting of No. 22b to Steel. Trapper's patients complained to him that they had difficulty getting past the large number of strange persons that congregated outside of Steel's door, that they could no longer find parking

places, that crime was on the increase and that many of them would rather go to a medical practitioner with a more prestigious address. In due course Trapper lost most of his patients.

Four months after he began occupying No. 22b, Steel sub-let two rooms to the High Street Disco and Food Supply Company Limited, to operate a dance hall and ital food restaurant. The resulting noise from the dance hall and restaurant made it very difficult for Trapper to continue his practice.

J. R. Ewing is of the opinion that the activities of Steel and the High Street Disco and Food Supply Company Limited are reducing the value of his properties. He has also been sued by Trapper who claims damages for breach of the covenant for quiet enjoyment. J. R. now seeks your advice.

What is your advice. Give reasons.

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QUESTION 5

(a) The belief, popular among tenants, that a landlord is bound to deliver and keep rented premises ' in repair and fit for human habitation ' is misconceived. Discuss.

(b) Mark, the yearly tenant of residential premises constructed in 1985, covenanted to be liable for repairs to the building. The building is constructed of prefabricated concrete with an external covering of river stones.

Whenever there is a 20° or more change in the temperature, the building expands slightly causing the stones to bow away from the concrete with a few falling off.

Inspection of the building reveals that if the stones had been properly tied, expansion would not have affected them. Experts advise that the only way to remedy the defect is to remove all the stones and replace them with proper ties and expansion joints.

Tough, the Landlord, now requires Mark to carry out the necessary work to remedy the defect.

Advise Mark.

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QUESTION 6

On May 1, 1988, Small leased his house (which is exempt from Rent Restriction/Control Legislation) to Graham for 10 years at an annual rent of \$24,000 payable by equal monthly instalments. The lease contained the following covenants by the tenants:

- " (1) To pay the rent reserved at the time and in the manner aforesaid.
- (2) At his own expense to pave the driveway of the said premises with concrete.
- (3) To keep the demised premises at all times insured against loss or damage by fire.
- (4) Not to assign, underlet or part with possession of the demised premises without the consent of the landlord. "

Further, the lease contained a proviso for re-entry on breach of any of the tenant's covenants.

On April 10, 1989, Graham sublet a room in the house to Wayne without obtaining Small's consent. The driveway has not been paved and the house is uninsured although on November 15, 1989, Small requested Graham to pave the driveway and insure the house. Graham last paid rent on January 30, 1990.

Advise Small whether he can forfeit the lease for:

- ( ) breach of the covenant to pay rent;
- (ii) failure to pave the driveway;

(iii) failure to insure;

(iv) subletting;

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

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QUESTION 7

On May 1, 1984, 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 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 eight 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 <sup>Brown</sup> James 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 \$25,000.

Advise, Brown, Sonia and Kate.



QUESTION 8

Advise whether the following are entitled to rely on the provisions of the Rent Restriction/Control Act:

- (a) Ted, the father of five children, who occupies a three-bedroom apartment in the Public Housing Scheme at Coore Village is threatened with eviction for being three months in arrears of rent which he considers too high. When built the cost of the apartment was U.S. \$22,000.
  - (b) Fred has lived for seven years at the home of widow Wilson, occupying his own bedroom and bathroom. His breakfast and a hot drink at night are provided by the widow on weekdays as Fred goes on weekends to his family, who live outside of the city. For this he has regularly provided enough to pay the widow's land tax - \$250 per year and occasionally he contributes \$50 for buying food when she complains of poverty.
  - (c) Ned has been employed by Hopefield Plantation to maintain their farm machinery. He rents their gate house at \$200 per month. He lives in it and is allowed to cultivate a one-acre plot in a corner of a field behind the engine room of the large estate
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