

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1993

LANDLORD AND TENANT
(Wednesday, May 26, 1993)

Instructions to Students:

- a) Time: 3 1/2 hours.
- b) Answer FIVE questions only.
- 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.
- d) It is unnecessary to transcribe the questions you attempt.

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QUESTION 1

Pierre is a university lecturer in French and under his contract of employment he is provided with a two-storey house in the vicinity of the university and owned by the university. In order to increase his income Pierre converts the bottom floor into four flats which he rents to students.

Pierre regards students as unreliable and devised the following scheme to ensure the payment of rent. Each student is required to sign a rental agreement with the landlord whereby each purports to be a joint tenant with all the other tenants who are also students, for a period of one year from the date of signing. Pierre signs the rental agreement as "Landlord and agent for the other tenants".

In February, two of Pierre's tenants were expelled from the university and left the flats without paying rent. Pierre insists that the remaining tenants, Joanne and Mark, pay the rent for the defaulting students and has threatened suit if they fail to do so.

The university has recently offered Pierre a larger house and he serves notice on Joanne and Mark to immediately quit and deliver up possession of the flats they occupy. Pierre's letter to quit advises Joanne and Mark that he, Pierre, is a mere licensee of the university and therefore cannot create a valid lease of the premises.

Joanne and Mark approach you for advice.

Advise them.

QUESTION 2

(a) In 1991, Wilson obtained a lease of commercial premises for a term of ten years. The premises contained a workshop. The lease contained a covenant -

"not to assign, underlet or part with possession of part only of the demised premises."

Wilson subsequently allowed Trail to use the workshop for his business of repairing car bodies. In 1992, Wilson entered into an oral agreement with Trail to grant him a lease of the workshop for a term of twelve months and thereafter yearly until determined by six months notice on either side.

Wilson, however, has refused to execute a written agreement. Trail has therefore threatened to seek a decree of specific performance against Wilson.

Advise Wilson.

(b) In 1975, Cissy, who lived in the United States of America, wrote to her agent Eddie and instructed him to "give my nephew Tim a piece of my land to work to help himself and his children."

In that same year, Eddie handed over the land to Tim who worked it for approximately four years and who built a chattel house thereon. In late 1989, Tim rented the house for \$2,200 per year to Auntie B who has continued to live there up to the present time.

In March 1993, Cissy returned home and gave one month's notice to Auntie B to leave the premises. Auntie B has refused to do so

claiming that she is a yearly tenant and is therefore entitled to one year's notice.

Cissy has sought your advice.

Advise her.

QUESTION 3

At the end of July 1992, Oscar 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 Tessa who has used it as a residence for herself and her six children. Tessa has also, since 1985, run a day care centre in an outhouse which she constructed in a corner of the garden. In mid-August 1992, Tessa went on holiday and instructed her eldest son to pay the rent in cash, to the new landlord, Oscar, when it became due on September 1.

On her return on September 16, 1992, Tessa discovered that the rent for September had not been paid and immediately delivered a cheque for the arrears to Oscar's wife at his residence.

On September 17, 1992, Tessa received from Oscar a notice to quit in a month's time for arrears of rent. Tessa 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.

QUESTION 4

(a) Tara entered into a five-year lease with Leyton the freehold owner of residential premises in Highgate. Prior to signing the lease, Tara made it clear to Leyton that she would be giving piano lessons on the premises in the evenings and on weekends.

Three months after she entered into possession, she often found it impossible to conduct piano lessons. The occupants of the adjoining premises, who were also Leyton's tenants used the premises as a wedding centre for the holding of wedding ceremonies and receptions. Tara informed Leyton that if the noise continued she would have no option but to vacate. Last month she left the premises.

Advise Leyton.

(b) Larry is the landlord of a block of four apartments in Fox Hill. The tenants of the two apartments upstairs are members of a commune and often entertain many friends in their apartments. The tenants of the ground floor apartments, Toni and Taj, complain that the activities of their neighbours are an embarrassment to them and that the heavy smoke that often comes downstairs from upstairs is upsetting. They are of the view that these acts constitute a breach of their covenant for quiet enjoyment with Larry.

Advise Toni and Taj.

(c) Minnie is the yearly tenant of a studio apartment which is part of an apartment complex. She has always paid the rent on time. Two days ago, she came home from work to find no water in the apartment. At first, she assumed that there was a general water lock-off but subsequently discovered that the executive committee of the corporation had locked off the water to her

apartment as her landlord was three months in arrears with payment of the maintenance charge.

Advise Minnie.

QUESTION 5

Toby recently leased from Lois for two years, an apartment, part of a three-storey block of apartments. The apartment is on the ground floor.

The lease contained, inter alia, a covenant by the tenant -
"to keep the interior of the leased premises
and all the leased fixtures, fittings and
glass therein in good tenantable repair."

There was no covenant on the part of the landlord to do any repairs.

Within days of going into possession, Toby observed moisture and flaking on the ceiling of the bathroom and a few days later water began to drip from the ceiling and concrete particles began to fall.

Last week Toby spoke to Lois who told him that it was not her responsibility to repair the leak as it was coming from the apartment above and that he should discuss the matter with Ray who was the owner and occupier of that apartment.

Toby therefore, spoke to Ray, who told him that the water dripping below came from an abandoned pipe running between the

horizontal dividing wall between the two apartments. Ray further explained that the corporation had, a year earlier, abandoned the use of all the old pipes in the building but that pipe had not been properly sealed and when he complained about this to the corporation he was told that the pipe was not now their responsibility, but that of the two owners. Ray, however, disagreed.

Toby in despair now seeks your advice.

Advise him.

QUESTION 6

On April 9, 1989, Lottie granted a lease of a building (not subject to rent restriction/control legislation) to Thelma for ten years, at a rent of \$12,000 a year payable in advance. Clause 3 of the lease contained the following covenants, inter alia, by the tenant -

- "(5) not to use the demised premises otherwise than as a private residence.
- (6) Not to underlet the demised premises or any part thereof without the previous consent in writing of the landlord such consent not to be unreasonably withheld."

The lease also contained a forfeiture clause for non-payment of rent or other breach of covenants. In February 1993, Thelma without applying for or obtaining Lottie's consent, sublet a room in the demised premises to Sandra who used it as her residence. Lottie became aware of the sub-letting in March 1993.

On April 2, 1993, Lottie served Thelma with a notice requiring her to remedy the breach of covenants contained in paragraphs (5)

and (6) of Clause 3 of the lease within 28 days. The rent which was payable on April 9, 1993 had not been paid and by letter dated April 20, 1993, Lottie demanded payment, the demand being expressed to be without prejudice to any breach of covenant. The rent was tendered but Lottie refused to accept it. Thelma ignored the notice served on April 2, 1993.

Lottie has instituted proceedings for forfeiture of the lease for breach of the covenants contained in paragraphs (5) and (6) of Clause 3 and Thelma has consulted you.

Advise Thelma.

QUESTION 7

Leo owns a house and a shed standing on a one-acre parcel of land. On June 1, 1990 he leased the entire premises to Mack, a motor mechanic and taxi driver, for ten years at a yearly rental of \$12,000 payable monthly. From the date of the lease, Mack has been living in the house and using the shed for his motor repair business. The last six months' rent being in arrears, Leo's bailiff, two weeks ago, entered the premises and seized and carried away the following -

From the shed: a taxi owned by one of Mack's customers,
 a motor cycle and a hydraulic jack both
 owned by Mack, and a car owned by Mack's
 wife, Judy.

From the house: a refrigerator, a rented television
 set, two king-sized beds and the
 kitchen sink.

The bailiff also seized a taxi, owned by Mack, which was parked on the roadway adjoining the demised premises.

You are consulted by Mack who tells you that the goods seized were impounded at Leo's premises. He also tells you that two days ago he saw Leo riding the motorcycle in the city and yesterday he entered Leo's premises and carried away the motorcycle.

Advise Mack.

QUESTION 8

Kendal owns three properties which are subject to rent restriction/control legislation. The properties are known as numbers 1, 3 and 5 High Street. No. 1 is a two-bedroom two-storey house which is unoccupied. No. 3, a one-bedroom apartment, is let to Stella at a rental of \$2,800 per month. No. 5 consists of four bedrooms, and is let to an elderly couple, Mr. and Mrs. Feelyoung who have been living there for ten years.

With regard to No. 3, it appears to Kendal from the number of different motor cars and Ninja bikes seen at the gate daily, that the apartment is being used for immoral purposes.

With regard to No. 5, Kendal has decided that he would like to live in it along with his wife and three children.

- (i) What steps should Kendal take with a view to obtaining possession of No. 5? Is he likely to succeed?

- (ii) Kendal intends, whenever Stella is not at home to enter with workmen and place Stella's possessions on the lawn and bolt up the doors to the apartment.

Advise Kendal on this course of action.

- (iii) Kendal intends to lease No. 1 and has sought your advice as to the procedure to be followed in determining the rent.

Advise him.
