

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATION, 1994

LANDLORD AND TENANT
(FRIDAY, MAY 20, 1994)

Instructions to Students

- a) Time: 3 1/2 hours
- b) Answer FIVE (5) 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 territory.
- d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

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QUESTION 1

A) Wayne, a retired security guard, occupied a studio apartment which Krystal had recently constructed behind her own house at 10 Western Avenue. Wayne paid Krystal \$3,000 quarterly which included the cost of utilities. There was no written lease.

In August 1993, Krystal went to Canada and asked Wayne to keep an eye on her house while she was away. In return for this service, Krystal informed Wayne that she would not charge him any rent for the period of her absence.

In January 1994, Krystal having decided to reside in Canada, sold 10 Western Avenue to Noel who in February 1994, took possession of the property and informed Wayne that he should vacate the apartment within seven days since he did not require the services of a security guard.

Advise Wayne.

B) Janet is a student at the Community College. For the last four weeks she has been looking for accommodation in nearby residential areas without any luck.

It was either that she could not afford the rent or that the owners of the properties were unwilling to let to students.

Finally, after trudging all day last Friday, she found a vacant apartment at a rental she could afford and for which her status was not against her.

As requested by the owner Glen, she paid one month's rent as a security deposit and one month's rent in advance. It was

agreed that she would receive the keys to the apartment on the Sunday afternoon as she had to go out of town to collect her belongings and preferred not to have the keys until then.

On Sunday afternoon when she returned to the apartment she found it occupied by Clyde who said he had rented it on the Saturday. Janet was given an envelope by Clyde on behalf of Glen which contained the money she had paid to Glen.

Advise Janet.

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 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;

- (v) that the tenant shall pay the full rent in advance without any deductions whatever.
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QUESTION 3

(a) Edward, who owns three contiguous commercial properties which are not subject to Rent Restriction/Control legislation leases one shop to Peter for 5 years to operate a school, leases the second to Derrick for 7 years to operate a hair dressing salon and lets the third to Roy on a monthly tenancy to operate a dress shop.

Two months after he took possession of the shop, Roy assigned his tenancy with the consent of Edward to Richard, a mechanic, who began to conduct his trade from these premises and also to operate an open air restaurant.

Peter now discovers that the noise and smell from Richard's restaurant is distracting to his students. Peter fears that the reputation of his school will suffer if his students performance is affected. Derrick also complains of the noise from Richard's garage. There has been a noticeable decline in the number of Derrick's customers since Richard established the garage. Moreover the noise coming from the garage has forced him to add sound-proofing to his salon at great expense.

Neither Peter nor Derrick wishes to give up possession of the properties but they wish to get relief from Richard's activities and recover the losses they have incurred.

Advise them.

(b) In 1992, Joy rented part of a house for herself and her two children. The part she occupied consisted of two rooms and a kitchen. She shared, however, bathroom and laundry facilities with the landlord and another tenant.

Recently, the landlord objected to a visitor of Joy using the bathroom and since then has taken to locking the bathroom in order to monitor its use. Now, in order for Joy and the other tenant to use the bathroom, they have to get the key from the landlord. Further the landlord has advised that he must not be disturbed with requests for the key after 10.00 p.m. or before 8.00 a.m. on weekdays, and 10.00 p.m. and 10.00 a.m. on weekends.

This development has caused great inconvenience for Joy and her family. She therefore seeks your advise.

Advise her.

QUESTION 4

Karcn has been the tenant of commercial premises on High Street since 1980. She uses the premises for the manufacture of straw items. The rent of \$1,000 is payable on the first day of

each month, in advance, and Karen is also responsible for payment of all utility bills. Karen had not entered into a written lease with the landlord, Paradise Development Company until 1981.

On December 22, 1993, the Paradise Development Company served Karen with notice to quit for non-payment of rent which she agrees has been in arrear for three months. She claims, however, that the premises have been in a state of disrepair for years, and that, during recent heavy rains, water seeped in through the defective roof causing damage to the inside walls and flooring and to straw which she stored on the premises for her business. As a result she decided to withhold the rent. She wishes also to claim compensation from the Paradise Development Company which has denied liability.

The Company states that it is an express term of the lease that the tenant will maintain the premises in a tenant-like manner, fair wear and tear excepted. Karen is of the view however, that the landlord is responsible for all repairs although this is not expressly stated in the lease.

Directors of the company have, from time to time, visited the premises in order to purchase straw items and are therefore aware of the disrepair.

Karen who is now being sued for arrears of rent and damages for failure to repair seeks your advice.

(i) Advise her.

- (ii) Would your answer be different if the premises were part of a condominium/strata complex?
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QUESTION 5

In 1992 Walker by deed leased a dwelling-house to Perry for a period of seven years at a rent of \$8,000 per annum payable quarterly.

The lease contained the following clauses -

- (i) the tenant if he so desires, might at any time during the term purchase the freehold reversion for \$120,000 on giving the Landlord six month's notice in writing of such desire;
- (ii) not to use the property for any purpose other than residential;
- (iii) to erect a concrete wall around the demised premises within two years from the commencement of the term hereby granted.

In January 1993, Perry assigned the lease to Charles who nine months later sublet to Sam for the remainder of the term less one day. After the assignment to Charles, Walker conveyed his reversion to Robert who has now discovered that -

- (a) the rent is two months in arrears;
- (b) Sam has started to operate a club in the house;

(c) that Charles would like to exercise the option in Clause 1 of the lease;

(d) The wall has not been constructed;

Advise Robert.

QUESTION 6

In May 1993, Reeval granted a lease of a dwelling-house to Simon at a rent of \$48,000 per annum payable by equal monthly instalments at the end of every month.

The lease contained the following covenants by the tenant -

- (i) to pay the rent reserved at the times and in the manner aforesaid;
- (ii) to keep the premises at all times in good and tenantable repair, fair wear and tear excepted;
- (iii) not to assign, underlet or part with possession of the demised premises without the consent of the landlord such consent not to be unreasonably withheld;

The lease also contained a proviso for re-entry and forfeiture if the rent is in arrears for 21 days "whether formally demanded or not" and also for breach of any other covenant contained in the lease.

On the 15th June 1993, Simon sublet the downstairs of the house to Baron, a reputed drug pusher without obtaining the landlord's consent. The ceiling tiles in the house are water-

logged and some had recently fallen causing the house to leak. Reeval had written to Simon requesting him to fix the ceiling tiles but he had received no reply. Simon last paid rent in March 1994.

- (a) Advise Reeval whether he can forfeit the lease and if so what action he should take.
 - (b) If Reeval can forfeit the lease, advise Baron if he can obtain relief against forfeiture.
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QUESTION 7

Terry is a tenant of a building with an annex, let to her by Peat, at a monthly rent of \$3,000. She uses the premises partly as a residence and partly as a dental office. She rents the annex to Fazia, a nurse at the dental office for \$800 which rent also includes payment for meals. The last two months of rent has not been paid by Terry.

Yesterday at 4:00 p.m. a bailiff entered the premises through the back door, which was shut but not locked. On seeing Terry who was attending to a patient named Celia sitting on the dental chair, he said:

"I have come to levy distress for arrears of rent."

He then requested Celia to get off the dental chair which he seized along with a stroller she had brought onto the premises. He further seized and carried away a washing machine, a bed and a refrigerator.

He then forced open the door to the annex and carried away Fazia's bed and dressing table. He then left but returned one hour later and drove away with Fazia's car which was parked on the roadway in front of the premises.

Advise Terry, Fazia and Celia.

QUESTION 8

Mack who has lived in Canada for many years, recently returned to the West Indies with his wife to spend his retirement years. Shortly before he left Canada he purchased a house in his native country which he intended to be his retirement home.

The house is presently tenanted but it is in need of substantial repairs both internally and externally as the tenant failed to carry out any repairs.

Mack plans to convert the house into two self-contained apartments. Thereafter he plans to occupy one of the apartments and to rent the other.

He now discovers, however, that the house is subject to rent restriction/control legislation. He therefore seeks your advice and wishes to know -

- (i) whose responsibility it is to carry out the necessary repairs in the absence of a written lease;

- (ii) what procedure he must adopt in order to have the present tenant, who is a monthly tenant, vacate the premises;
- (iii) whether the apartment he intends to let will be governed by such legislation; and if so,
- (iv) the procedure for having the rent determined for the apartment.

Advise Mack.
