

**COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 1996**

**LANDLORD AND TENANT**

**Monday, May 27, 1996**

**Instructions to Students**

NORMAN MANLEY LAW SCHOOL LIBRARY  
COUNCIL OF LEGAL EDUCATION  
MONA, KINGSTON, 7. JAMAICA

- (a) Time: 3½ 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 territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

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**PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.**

**QUESTION 1**

- (a) In 1992 Dawn gave Simone permission to live in the small side of her house rent free and a few months later permission to park her car in Dawn's garage.

In 1993 Dawn granted Simone a five year lease of the apartment, which lease contained no reference to the use of the garage. Last year Dawn sold and conveyed the whole of the property (including the apartment) to John who now refuses to allow Simone to park her car in the garage.

Advise Simone.

- (b) In 1994 Korry obtained a lease of commercial premises for a term of ten years. The premises contained a workshop. The lease contained a covenant which stated as follows -

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

Korry subsequently permitted Chris to use the workshop for his business of making jewelry. In 1995 Korry entered into an oral agreement with Chris to grant him a lease of the workshop for a term of one year and thereafter yearly until determined by six months' notice on either side.

Korry however has refused to execute a written lease and Chris has now threatened to seek a decree of specific performance against Korry.

Advise Korry.

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**QUESTION 2**

Property Development Limited wish to offer standard leases for each of their following schemes -

- (i) twenty apartments in a three storey building with parking facilities, a garden area and a swimming pool ;
- (ii) a shopping plaza consisting of fifteen units in a recently developed residential area.

What special considerations would you bear in mind when taking instructions for these leases?

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**QUESTION 3**

Two years ago Wendy leased a small cottage called "Valley Mist" from Carlos for five years. Rent was paid monthly. They both executed a lease which contained the usual covenants including a covenant for quiet enjoyment.

Two months ago Carlos, who lives one half mile up the hill from "Valley Mist" in a neighbouring village, has decided that the house he is living in is now too large for him to continue to live in and so he gave Wendy one month's notice to quit.

Wendy has refused to do so, however, as there is no break clause in the lease.

As a result, two weeks ago Carlos removed the foot bridge which spans the stream that runs in front of "Valley Mist" and which provides access to the cottage from the main road. This bridge is a part of the demised premises.

In addition, he has re-located his piggery so that when the wind blows down the valley towards "Valley Mist", which it does most of the time, the smell from the piggery engulfs the cottage thus forcing Wendy to keep the windows and doors closed.

Wendy seeks your advice in this matter.

Advise her.

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#### QUESTION 4

Richie, the yearly tenant of commercial premises constructed in 1990, covenanted to keep the building in repair and to yield it up in repair. The building is constructed of prefabricated concrete with ceramic floor tiles and spanish clay roofing tiles.

The building is located in a former river bed, the river having been diverted many years ago. Whenever it rains heavily however, minor flooding occurs in the area and moisture seeps into the flooring causing the floor tiles to buckle and to remain uneven until the flooring dries out.

In addition, the roof tiles have started to crack so that whenever it rains the roof leaks.

Inspection of the building reveals that if the flooring had been properly sealed, moisture would not have affected the floor tiles and had the roof tiles been properly installed allowing for expansion and contraction, the cracking would not have occurred. Experts advise that the only way to remedy these defects is to lift all the floor tiles and properly seal the concrete before re-laying them. The roof tiles will have to be replaced and correctly installed.

Lenny, the landlord, now requires Richie to carry out the necessary work to correct the disrepair. Richie however is of the view that he is not liable for these repairs and further, had the building been insured by the landlord (though not required by the lease), then the insurers would pay for the repair.

Richie seeks your advice.

Advise him.

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### **QUESTION 5**

Julius Singh took a lease of premises in St. Anns for seven years commencing on January 1, 1987, from Mark. The lease contained the following clauses -

- (i) an option to purchase, the option to be exercised during the subsistence of the lease by the lessee giving to the lessor three months' notice in writing and paying to the lessor the sum of \$50,000;
- (ii) an option to renew, that the landlord will whenever requested so to do by the tenant, grant to him a lease of the demised premises for a further term of seven years at the same rent and containing the same covenants and provisos as are herein contained.

When the lease expired in 1994 Julius held over and has been paying the rent of \$36,000 per annum to Mark who has received it and has never questioned his right to remain in occupation. Julius wished to go abroad and he consulted his attorney-at-law who informed him that since 1994, he was a tenant from year to year on the terms of the original tenancy created by the lease. Julius subsequently assigned his interest in the lease to his friend Octavius and wrote a letter informing Mark of the assignment.

As soon as Octavius took possession he wrote to Mark enclosing a cheque for the rent for 1996 and in his letter he said he was exercising both the option to purchase and the option to renew.

You are consulted by Mark who wishes to be advised on the validity of the claims by Octavius to exercise the options in the lease.

Advise Mark.

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**QUESTION 6**

In 1990, Lilian granted a 10-year lease of a shop (not subject to rent restriction/control legislation) to Michael. The rent reserved by the lease was payable quarterly in advance. The lease contained, inter alia, covenants against assignment or subletting without consent, such consent not to be unreasonably withheld and a right of re-entry exercisable on breach of any tenant's covenants.

In 1994, Michael had asked Lilian for consent to assign the lease, but Lilian took so long over the matter that the potential assignee withdrew. In January 1995, he found another assignee, Norma, who had satisfactory references. Not wishing to risk any delay, Michael assigned the lease to Norma without asking Lilian. The following month Lilian found out about this. Her agent demanded rent by mistake for the March 1995 quarter. The rent was again demanded for the June 1995 quarter but this time qualified by the words "without prejudice". In July Lilian served a notice on Norma specifying the breach. One day later, she re-possessed the property while it was unoccupied and changed the locks.

Advise Norma as to her rights in relation to the property.

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QUESTION 7

On May 9, 1986, Rawie granted a lease of a house and a shop to Thelma at a rent of \$3,000 per month payable in advance. Thelma is now nine months in arrears of rent and despite Rawie's repeated requests, she has refused to pay the rent. Rawie, fed up, prepared a notice to quit for Thelma which read as follows -

Thelma:

You are required to quit and deliver up possession of the house which you hold of me on May 9, 1996.

Signed: Rawie

May 1, 1996

Rawie subsequently served the notice on Thelma's maid at the house at 8.00 p.m. the following Sunday.

On receiving the notice, Thelma paid Rawie \$9,000, which represents three months' rent, which Rawie accepted. Rawie, not satisfied, instructed a bailiff to levy distress for arrears of rent. The bailiff entered the premises through an open window. Thelma, on seeing the bailiff, took up her tape recorder and radio and passed it to the maid and told her, "Run, don't let the bailiff get it". She also took up her keys and locked up the rooms to the rest of the house.

Advise Rawie as to the validity of the notice to quit and his remedy with respect to the distress.

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**QUESTION 8**

Karen, since 1989, has had a monthly tenancy of three unfurnished rooms and bathroom with shared use of a kitchen which is part of a larger house at South Street. The house is subject to rent restriction/control legislation. The house has been in a state of disrepair for some years but in recent months rain has been penetrating her children's bedroom, the kitchen window has been hanging on one hinge and the back step has started to crumble and is therefore now dangerous to use. The basin and shower taps in the bathroom are also leaking.

Karen, since 1993, has repeatedly asked the landlord to carry out repairs but he has so far failed to do so. Instead each year he has increased the rent by 25%.

Last month and again this month, Karen withheld the rent with a view to effecting some repairs.

Last week, however, the landlord instituted proceedings for the recovery of rent and possession of the premises.

Karen seeks your advice as to her legal rights.

Advise her.

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