

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1999

LANDLORD & TENANT

(Thursday, May 27, 1999)

Instructions to Students

- (a) Time: 3½ hours
- (b) Answer FIVE QUESTIONS.
- (c) In answering any question, a candidate may rely 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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

(a) Oscar was the sole surviving trustee of the estate of Taylor Johns who died in June 1997. Amongst the testator's real property was a house at 20 Seashore Drive which he devised on trust for sale (with power to postpone sale) to his married daughter Jenny and his son Lesley who had emigrated to England twenty years ago.

Oscar moved into the premises soon after John died, in the interest of security and to prevent deterioration of the furniture, fixtures and fittings.

In December 1997, he met Eva Sharp, an old friend who said she was having great difficulty finding temporary accommodation. Oscar allowed her to move into one of the bedrooms of the house and to use the kitchen and bathroom. She paid him \$3,000 per month in return. At her insistence, Oscar gave her a receipt each month. Prior to her entering into possession, Oscar had said to her that if the house was not sold shortly it might be possible for her to lease it as a monthly tenant.

In February 1999, Jenny informed Oscar that she and her brother have decided that they wished to have the house sold.

In light of this request, Oscar has asked Eva to vacate the premises but she has refused to do so.

Oscar has therefore sought your advice.

Advise him.

(b) Ali entered into an agreement to purchase a townhouse in Ravenscourt. As he was unable to get a mortgage unless he intended to reside in the premises, he

persuaded the tenant Zac, to vacate the premises pending completion of the sale by promising to let him into possession with a 20% reduction in rent as soon as the purchase was complete.

Zac was quite happy to accept this arrangement as he was due to go on six-months study leave abroad and was happy not to have to pay rent for the period he would be abroad.

Ali was let into possession pending completion of the sale but the vendor, Victor, subsequently rescinded the contract and gave notice that he intended to repossess the premises at the end of the month.

In the meantime, Zac has returned from abroad and discovers that he has nowhere to live.

He now comes to see you.

Advise him.

QUESTION 2

(a) Your client Mattie Mays owns four contiguous commercial buildings on Main Street - Nos. 2, 4, 6 and 8. For many years all of the properties were leased separately for terms between three years for No. 2 and ten years for No. 6. As the changing demands of the area required better land utilization, Ms. Mays decided that in the near future she would redevelop the properties by demolishing the existing buildings and constructing a shopping mall. With this in mind as each lease expired she let the buildings on monthly tenancies only. However the lease on No. 6 which was entered into in 1993 will not expire until 2003.

The lease is in writing with the usual covenants but does not contain a break clause.

Your client is anxious to begin the development plans because of a great increase in business activity in the area and therefore would like to terminate the lease on No. 6.

She has sought your advice.

Advise her.

(b) Jake took a quarterly tenancy of an undeveloped plot of land from Job, who claimed he held under a seven-year lease on the two acres of which Jake's plot is part. Jake then erected a large wooden house on the plot and lived there with his wife and three children.

Seven months ago a Mr. Knave came onto the land and claimed to be the owner of it. He also stated that Job's term had expired one year ago. He further instructed Jake to pay no further rent to Job.

Jake, however, paid another quarter's rent to Job who insisted that he had a subsisting tenancy while admitting that Mr. Knave was indeed the owner of the land.

Last week Mr. Knave again visited Jake and has threatened to evict Jake and has insisted that the next quarter's rent must be paid to him.

Jake now consults you and seeks your advice.

Advise Jake.

QUESTION 3

Lawla, the owner of adjoining properties at Nos. 6 and 8 Ocean View Road in the capital city, lets No. 6 for a fixed term of three years to Dr. Kildare, a plastic surgeon, to be used as his surgery. Six months later he let No. 8 to Perry Mason, the well known criminal lawyer. Both tenancies contained express covenants not to "assign or sublet the whole of the premises without the consent of the landlord."

For the first seven months of his tenancy, Dr. Kildare enjoyed a prestigious practice amongst the elite who often required "beauty surgery" as well as liposurgery to get rid of excess fat. Soon after Perry Mason opened his chambers at No. 8. however, his practice began to decline and his patients complained to him that they had difficulty getting past the large number of suspicious persons that gathered outside of Mason's chambers. In addition, they were afraid to visit his surgery because of the "criminals" they had to encounter. In due course, Dr. Kildare lost most of his patients.

Soon after Mason let No. 8, he sublet two rooms to General Major, a popular D.J. General Major used one room as a recording studio and the other as a restaurant. The resulting noise from both activities made it difficult for Dr. Kildare to continue his practice.

Lawla is of the opinion that the activities of Mason and General Major have diminished the value of his properties. Further, Dr. Kildare has threatened to sue

him for breach of the covenant for quiet enjoyment unless the situation is remedied.

Lawla now seeks your advice.

Advise him.

QUESTION 4

(a) Mazie, who lived in Canada for many years and was soon to retire, wrote to her daughter Annie last year and asked her to lease a furnished two bedroom townhouse in a nice residential area. She asked her to negotiate the rental for the property and said that she was prepared to pay up to \$1,000 (Canadian) per month.

Annie subsequently located an appropriate townhouse (which is not subject to rent restriction legislation) and wrote to Mazie indicating that she had to pay the first month's rent on January 1, 1999, in order to secure the premises. This she did, and, executed the lease on behalf of Mazie.

The lease is a very simple document and only provides for the term which is for three years, a description of the premises, the rent to be paid and an option to determine by either party upon giving six months notice in writing.

In March this year (1999), Mazie returned home and began occupation of the premises. Soon after, however, she discovers that

- (i) there are missing window panes in one bedroom;

- (ii) the townhouse is infested with cockroaches and rats;
- (iii) the water from the toilet seeps into one of the bedrooms whenever the toilet is flushed;
- (iv) a number of light bulbs are blown.

Having discovered these problems, Mazie wrote to the landlord Gussie, asking him to remedy the situation, but he has failed to act.

Last month as a result of the constant seepage of water into the bedroom a part of the floor collapsed while Mazie was standing on it causing serious damage to her legs.

Mazie has therefore sought your advice.

Advise her.

- (b) State the covenants which ought to have been included in the lease at (a) above.

QUESTION 5

On January 1, 1996, Exco a supplier of petrol and petroleum products, granted Viv. Ltd. a twenty-one year lease of a petrol filling station. The lease contains, inter alia, the following -

- (i) a covenant by the tenant to pay the rent monthly in advance;
- (ii) a full repairing covenant including structural repairs by the tenant;
- (iii) a covenant stipulating that the tenant should purchase all of its petrol supplies and petroleum products from the landlord;

- (iv) an option to purchase the reversion at market value at anytime after the third year of the term and upon giving six months notice.

In 1998, Viv Ltd. was unable to pay any rent due to extreme financial difficulties, and so on January 1 this year (1999) assigned the remaining period of the lease to Taddy Garages Ltd. Exco consented to the assignment but was not a party to the deed of assignment.

On March 1, 1999, Exco sold their reversion to B.P. Oils Ltd.

Taddy Garages Ltd. has refused to pay any rent to B.P. Oils Ltd. because they claim that the premises are in need of repair. They have also refused to be restricted in their purchase of petroleum products from B.P. Oils Ltd. only and have given notice of their intention to purchase the reversion at current market value.

B.P. Oils Ltd. now wish to -

- (a) recover the year's unpaid rent from Viv Ltd;
- (b) recover two months rent from Taddy Garages Ltd.;
- (c) enforce the repairing covenant against Taddy Garages Ltd.;
- (d) enforce the covenant to supply petroleum products to Taddy Garages Ltd;
- (e) refuse the option to purchase.

B.P. Oils Ltd. have now consulted you.

What is your advice?

QUESTION 6

On November 1, 1995, Alvin granted a lease of his house (not subject to rent restriction legislation) to Bernard for 10 years at a yearly rent of \$24,000 payable in advance in equal monthly instalments. The lease contained the following covenants, inter alia by the tenant -

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- (1) to pay the rent reserved in manner aforesaid;
 - (2) to keep the demised premises in good and substantial repair;
 - (3) not to assign, underlet or part with possession of the demised premises without the consent of the landlord.

The lease also contains a proviso for re-entry and forfeiture if the tenant is in arrears of rent for twenty-one days and also in breach of any of the other covenants contained in the lease.

Bernard has not paid rent since November 1997. In January this year (1999) he sublet two rooms in the house to Carlton, without Alvin's consent. The house is also in a state of disrepair.

- (i) Advise Alvin whether he can forfeit the lease and if so what steps he should take ?
 - (ii) If Alvin can forfeit the lease can Bernard obtain relief against forfeiture?
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QUESTION 7

On May 9, 1998, Ronnie granted a lease of a house and a shop to Ella at a rent of \$3,000 per month payable in advance. Ella is now nine months in arrears of rent and despite Ronnie's repeated requests, she has refused to pay the rent. Ronnie, fed up, prepared a notice to quit for Ella which reads as follows -

Ella:

You are required to quit and deliver up possession of the house which you hold of me on May 9, 1999.

Signed: Ronnie

May 1, 1999.

Ronnie subsequently served the notice on Ella's maid at the house at 8:00 p.m. the following Sunday.

On receiving the notice, Ella paid Ronnie \$9,000 which represents three months' rent, which Ronnie accepted. Ronnie, not satisfied, instructed a bailiff to levy distress for arrears of rent. The bailiff entered the premises through an open window. Ella, 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 Ronnie as the validity of the notice to quit and his remedy with respect to the distress.

QUESTION 8

In 1998, Lizzie inherited a property from her grandfather with two small cottages on it. The property is subject to rent restriction legislation.

Cottage 1 is in good condition and has been occupied for more than twenty years by Mr. and Mrs. Settled. On meeting with them she learnt that their rent had never been assessed and that the last increase was set by her grandfather in 1990.

Cottage 2 is in a poor state of repair and has been so for many years. This cottage is occupied by Miss Ting and her two grandchildren. The rent on this cottage has also not been assessed but the last increase was in 1995.

Because of the condition of Cottage 2, early this year Lizzy got an estimate to carry out repairs to the building and these repairs were carried out between February and April. The following repairs were carried out -

- (i) new flooring and ceiling in front bedroom;
- (ii) the roof on the verandah was replaced and rails were put around the verandah;
- (iii) part of the flooring in the living room, dining room and third bedroom was replaced;
- (iv) large cracks in the walls were filled in;
- (v) a new kitchen built of hollow blocks was erected in place of the original kitchen, the walls of which had fallen down;
- (vi) both the interior and exterior walls of the building were painted.

The repairs having been completed at a cost of \$300,000, Lizzie now wishes to -

- (a) recover the sum spent on the repairs to Cottage 2 since she is of the view that they ought to have been carried out by the tenant;
- (b) increase the rent on both cottages to reflect current market values;
- (c) terminate the tenancy of Miss Ting as she is of the view that Miss Ting cannot afford to pay the rent and properly maintain the building.

Lizzy now seeks your advice.

Advise her.
