

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST-YEAR EXAMINATIONS, 2004

LANDLORD AND TENANT

(WEDNESDAY, MAY 19, 2004)

Instructions to Students

- (a) Time: 3 ½ 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 relevant territory.
- (d) It is unnecessary to transcribe the questions you attempt.
- (e) Answers should be written in ink.

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PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

## QUESTION 1

In February this year (2004), Oscar entered into a lease for three years of an unimproved quarter ( $\frac{1}{4}$ ) acre lot of land from Rob. Rob claimed he held two acres under a five-year lease of which Oscar's lot is a part. The lease was in writing and rent was payable monthly in advance.

Oscar then built a wooden house on the lot and began living there with his wife and eight children.

Six weeks ago a Ms. Bronx came on the land and claimed to be the owner of it. She stated that Rob's term had expired one year ago. She further instructed Oscar to pay no further rent to Rob.

Oscar, however, paid the rent as usual to Rob who insisted that he had a subsisting lease while admitting that Ms. Bronx was indeed the owner of the land as the beneficiary of her late father's estate.

Last week Ms. Bronx again visited Oscar and has threatened to evict him and has insisted that next month's rent must be paid to her.

Oscar now consults you and seeks your advice.

Advise Oscar.

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## QUESTION 2

Morris Maxwell, a mechanic, was employed by your client Fred Sandford as a foreman in his garage and gas station business. His contract of employment included the provision of a cottage rent free while employed and termination on two weeks notice on either side.

The cottage was built so as to house a garage foreman as the garage is rather isolated and in the past it was difficult to get a foreman without accommodation being offered. It formed part of the property leased to Fred by Taxhell Oil Company. That lease contained an absolute covenant against subletting by the tenant. Fred, however, had authority to grant a licence to occupy the cottage to a person employed by the garage.

On March 1 this year (2004) Fred employed Morris on the following terms –  
"Hours Monday to Friday 8 a.m. – 5 p.m. Lunch 1 p.m. – 2 p.m.  
Saturdays, 8 a.m. – 1 p.m. Wages \$5,000 per week. Overtime  
\$125 per hour. Cottage rent free, whilst employed. Holidays, two  
weeks paid holiday a year with the normal public holidays. Notice  
of termination – two weeks to be served either way."

On March 2, Morris along with his wife, children and furniture moved into the cottage. But his competence as a mechanic and his general demeanour proved unsatisfactory, so Fred gave him written notice on April 1 as follows –

"To Mr. Morris Maxwell. After a month's trial I have decided that your performance on the job is most unsatisfactory and therefore as per our agreement you have two weeks' notice to date from April 15, 2004. We also remind you that the cottage is to be vacated on April 30, 2004."

Fred now informs you that although Morris accepts termination of his employment he refuses to vacate the cottage on the ground that he is a tenant and entitled to statutory protection.

Advise Fred.

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### QUESTION 3

Your client, Monica Moe, a young fashion designer, wished to start an exclusive boutique to sell her designs. She saw an advertisement in a newspaper which stated in part –

"Situated in the heart of one of the prime locations in the city an exciting new development in shopping malls that offer the perfect setting for successful retailing with an eye to the future. With its traditional design and bright atmosphere POSH MALL with only eight units will undoubtedly prove a major attraction for discerning shoppers and the modern mall stall setting will provide an environment that reflects the superior standard of today's retailer."

Impressed with this advertisement, in July 2003, Monica entered into a written lease (with the usual covenants) of a downstairs unit (Unit 3) for three years, and commenced business in August 2003. The business took off quite well and she was able to attract a high-income clientele.

However, the landlords AZE Company had great difficulty renting the other ground floor units until January this year (2004), when they let Unit 2 to the National Lottery Company and February when they let Unit 4 to Greasey Knave

Fast Foods. The latter then placed tables and chairs on the walkway outside the Unit which limited access to Monica's unit.

The establishment of these businesses was to be devastating on Monica's business whose up scale clients ceased visiting her shop as the ambiance in the mall had changed substantially. Large crowds converged daily on Units 2 and 4 along with the resulting noise and commotion.

Monica complained to the landlords on a number of occasions that they had derogated from their grant but those complaints were ignored. She therefore withheld the rent for April and May. Last week, the landlords threatened to sue her for the outstanding rent.

Advise Monica.

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#### QUESTION 4

Your clients, a charitable association known as the Royal Port Association, owns an apartment complex at Royal Port village. The complex consists of three three-storey buildings of twenty-four apartments each and a children's play area. The buildings were constructed after Hurricane Pedro in 1989 and were built by the Department of Housing to be rented to low income families whose houses were destroyed by the hurricane. There are no written agreements and they are exempt from rent restriction legislation.

In 1995 the Department of Housing transferred ownership of the complex to the Association to provide it with a regular income. Unfortunately, the buildings have deteriorated considerably due to the passage of time and acts of vandalism. At

the same time the Association has had great difficulty collecting rent from the tenants who say they will not pay rent while the buildings are in disrepair. The specific problems are as follows –

1. The staircases have missing rails as well as no light bulbs – the act of vandals – which makes them unsafe at night.
2. The garbage chutes from each floor are frequently blocked as the tenants throw all sorts of things down them for example old electrical appliances, cushions, broken furniture, etc.
3. The common laundry areas have become unsuitable for use by the tenants as the fixtures and fittings were removed by vandals.
4. The lavatory tanks in most of the apartments due to a design fault regularly overflow which results in flooding in that apartment and often in the apartment below.
5. On several occasions the water supply to the complex has been disconnected due to non-payment of the bills by the Association.

Your clients recently received a letter from the tenants' attorney-at-law threatening to sue them for breach of their implied covenants for quiet enjoyment and repairs.

They have therefore sought your advice. Advise them.

## QUESTION 5

George is the tenant of a five-bedroom dwelling house let to him by Colin. By deed, they agreed to a lease of four years at a monthly rent of \$6,000. The lease contains *inter alia* the following tenant's covenants:

- 7.1 To pay the rent reserved in the manner aforesaid;
- 7.2 Not to assign, sublet or part with the possession of the premises without the previous written consent of the landlord, such consent not to be unreasonably withheld;
- 7.3 To use the premises as a private residence for the occupation of one's household only.

George has found himself in financial straits. Late last year, George asked Colin to consent to his subletting a bedroom to Donald. Colin refused saying that he does not trust men who wear their hair like Donald because they look like terrorists. In January, without consulting Colin, George sublet the bedroom to Donald and another to Condoleeza. Also in that month, George placed several advertisements on campus for lodgers. He has since taken in paying guests who stay in one of the bedrooms for one to two weeks at a time. George owes rent for two months.

At the end of last month, Colin learnt what George had done.

- (i) Advise Colin as to whether George is in breach of any covenants and the remedies available to him (Colin).
- (ii) Would your advice be different if last week Colin wrote a letter to George demanding rent "without prejudice"? If yes, in what way?

## QUESTION 6

Your client, Plaza Limited, are the owners of a four-storey building on Main Street. The building was designed and is currently used for mixed residential and commercial occupation and is constructed on registered land. The ground floor is leased to Jeans and Things Limited under a ten-year lease which was entered into in October 1998. The three upper floors are divided into six apartments, two on each floor, and are all let on twenty-one year leases which all began in 1995.

The lease to Jeans and Things Limited which was dated July 15, 1998, contains inter alia, the following covenants –

- " (6) Not to do or suffer or permit to be done or suffered on the premises anything which may be or become an annoyance, inconvenience or nuisance to the lessors or the other owners or occupiers of any adjoining or neighbouring property or to the neighbourhood or which may infringe any legislation for the time being in force.
- (7) Not to carry on or permit upon the premises or any part thereof any noisy or dangerous trade business or manufacture or occupation or any nuisance nor use the same or allow the same to be used for any illegal or immoral purpose."

The lease also contains the following proviso for forfeiture and re-entry –

"provided that if the rent hereby reserved or any part thereof is at anytime in arrears and unpaid for 21 days after it is due, whether legally demanded or not, or if there shall be any breach of any of the covenants on the part of the tenant



contained herein, then it shall be lawful for the landlord at any time thereafter to re-enter the demised premises and thereupon the term shall absolutely cease and determine."

In July 2003 Jeans and Things Limited with the consent of your client, Plaza Limited, sub-let the ground floor to Flab Limited for use as a sauna bath, gymnasium and health club for a term of three years. The covenants in this lease were all identical to those in the head-lease but there was no proviso for forfeiture and re-entry.

In February this year (2004), a number of the residential tenants complained to Plaza Limited that Flab Limited have allowed the club to be used for illegal and immoral purposes, and in particular, that they have employed as masseuses on the premises, women who for reward commit lewd and immoral practices at the request of customers of the business. These activities have brought the premises as a whole into disrepute.

Further, a large number of persons seeking such services attend at and loiter near the building so causing nuisance and annoyance to the residential tenants.

Plaza Limited through its manager comes to see you. They admit that they had heard rumors about the activities at the Club but had put it down to the conservative nature of the tenants. Further when they sought confirmation from Jeans and Things Limited they denied any such knowledge. Recent checks, however, have confirmed the complaints of the tenants.

Plaza Limited now seeks your advice.

Advise Plaza Limited.

## QUESTION 7

By lease dated October 1, 1999, Brown let a three-bedroom house to Rose for seven years at a monthly rent of \$500 payable in advance. Rose is a piano teacher and converted one of the bedrooms into a piano studio. Rose last paid rent on November 1, 2003.

On May 1, 2004, at about 3:00 p.m., Brown accompanied by Rambo, his bailiff/sheriff, entered the house through the front door which had been left slightly ajar. They told Rose who was at the time coaching a young student that they were there to seize her goods since she wasn't paying her rent.

Rambo walked over to the piano where the student was sitting and shouted "Move, boy" and pushed the baby grand piano in the direction of the door. He told Rose that he was seizing it. He also seized the money that Rose received from her students for their lessons and which had been just thrown loosely on a counter in the kitchen, the DVD player, TV and a digital camera from the living room. He placed all the items by the door.

When Rambo turned his back, Rose picked up her digital camera, handed it to her student who was observing the happenings by the door and yelled, "Run, boy." Her student ran off with the camera.

Rambo then kicked down a locked door to an adjoining bedroom and seized the jewellery on the dressing table. That jewellery actually belonged to Rose's niece, Amber, who was visiting for the holidays.

Rambo packed all the seized items into his truck and drove off. Despite Rose's questioning, Rambo refused to answer her questions about where he was taking the goods. She is especially worried about her baby grand piano which is valued at over \$6000.

Advise Rose and Amber on the validity of the distress and the remedies, if any, which may be available to them.

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### QUESTION 8

Mary Panton, married with three young children, became owner of 18 Kew Terrace by gift from her uncle. The house is subject to rent restriction legislation. She has up to now lived in a comfortable penthouse apartment provided for her husband by his firm.

Mary is now anxious to move into the house because of its large garden and separate study for her husband. She wishes to start proceedings for possession against Josh and Bessie Black, an elderly childless couple who have been tenants in the house for 20 years, on the grounds that she reasonably requires it for occupation by herself and her family and that Mrs. Black did private catering and Mr. Black shoe repairs on the premises.

- (i) Advise Mary of her chances of succeeding in gaining vacant possession.
  - (ii) Would your answer be different if Mary needed the house to accommodate her widowed mother and two maiden aunts whose home had been destroyed by fire and who would otherwise have had to move in with Mary and her family?
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