

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2008**

LANDLORD AND TENANT

(WEDNESDAY, MAY 14, 2008)

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.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Odette was the owner of a guesthouse and apartment complex (not subject to rent restriction legislation) which provided both long-term and short-term accommodation. In April 2004 Nicole moved into a studio apartment on the complex, as a long-term guest, paying a monthly sum which included breakfast. Odette also provided cleaning and linen services which Nicole paid for separately. Nicole has not been provided with breakfast since May 2006 and shortly thereafter she declined all other services.

On March 1, 2005, Marie moved into a room in the guesthouse as a short-term guest paying a weekly sum which included breakfast and services. In June 2005, she moved into a studio apartment in the complex. It was agreed that she would no longer be provided with breakfast and services and there was a slight reduction of her rent. However, Marie continued to be provided with breakfast up to January 2008, at which time breakfast was discontinued.

Recently, Odette sold and conveyed the guesthouse and apartment complex to City Developers Ltd., for the construction of a shopping mall. Yesterday, the company informed Nicole and Marie that they must vacate their respective premises within five days.

Advise Nicole and Marie as to their legal positions.

QUESTION 2

In 2006, Kirt formed a company with his brother, Daniel, an attorney-at-law, for the purpose of carrying out the business of computer repairing. The company was called Ectronics Limited. In the same year (2006) Ectronics Limited purchased the freehold title to a unit in a business complex.

In 2007, the brothers fell into disagreement and decided that while they would formally continue carrying on the business from the office for taxation purposes, the day to day running of the business would be Kirt's responsibility as he was the technician. To make full use of the office space, however, it was agreed that the company would grant Daniel a lease of one half of the office space from which he would conduct his law practice.

Daniel then went into possession at a rental of \$25,000 per month. Three months later both parties executed a lease, which contained the following provision:

“That the lessee shall from this day (November 1, 2007) be entitled to exclusively possess the premises demised herein until such time as Ectronics Limited shall cease to exist and at a rental of \$440,000 per year payable monthly since taking up possession.”

Daniel, however, has continued to pay to Ectronics Limited the rental of \$25,000 per month in advance which Kirt has paid into the business account of Ectronics Limited.

Daniel is anxious to show that the 2007 lease is void and that there exists instead a periodic monthly tenancy because by so doing he would be able to escape liability to pay the higher rent under the lease.

Advise Daniel.

QUESTION 3

At the end of September 2006, Viola purchased a dwelling house which is exempt from rent restriction legislation. The house had been occupied under an oral monthly tenancy for some five years by Tamika who has used it as a residence for herself and her two children.

Tamika has also, since 2004, operated a catering service from the house.

In mid-February 2008, Tamika went on a course of study abroad and instructed her daughter to pay the rent in cash, as was required, to the new landlord Viola at her place of business. Rent was due on March 1.

On Tamika's return on April 26, she discovered that the rent for March and April had not been paid and immediately delivered a personal cheque for the arrears to Viola's husband at her residence.

The following day (April 27) Tamika received from Viola a notice to quit in one month's time, for arrears of rent. Further she ordered her to immediately discontinue operating the business as the premises were let for residential purposes only.

Tamika is very distressed at this turn of events as she had hoped to remain in possession for many years more. In addition, she had got permission from the previous owner to operate the business even though it was located in a residential area.

Tamika now seeks your advice.

Advise her.

QUESTION 4

Your client, Just New Parts Co. (Parts), entered into a written five-year lease with Haddy's Service Station Centre (Haddy's) in 2005. By that agreement Parts agreed to modify and improve a derelict building located on the southern corner of the gas station. Six months later it spent \$5M restoring the building and thereafter commenced selling motor vehicle parts.

In January of this year (2008), Parts received a letter from Sand Oil Company (Sand), instructing it to vacate the premises within seven days, as Sand was the owner of the gas station and was about to demolish all the buildings on the property.

Parts' response was to point out that it had a five-year lease with Haddy's and that Haddy's had held itself out as the owner of the premises, but having a contract with Sand to sell its gas and other petroleum supplies.

Parts also contacted Haddy's who admitted that it had a ten-year lease with Sand but with an option to purchase, which option had to be exercised by December 2007. The option was not exercised and so it (Haddy's) was now operating as a monthly tenant.

Two weeks ago Sand demolished the building occupied by Parts. Parts is of the opinion that its right to quiet enjoyment has been breached.

Advise Parts.

QUESTION 5

Your client, a charitable association known as the Low Income Foundation, has owned since 2005 an apartment complex at Royal Village. The complex consists of four three-storey buildings of twenty–four apartments each and a children’s play area. The buildings were constructed after Hurricane Hugo 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, but the land is registered.

In 2005 the Department of Housing had transferred ownership of the complex to the Foundation to provide it with a regular income. The buildings however, have deteriorated considerably due to the passage of time, subsequent hurricanes and acts of vandalism. At the same time the Foundation 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 make 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 some of the apartments, due to a design fault, regularly overflow which results in flooding in those apartments and often in the apartments below.

5. On several occasions the water supply to the complex has been disconnected due to non-payment of the bills by the Foundation.

Your client recently received a letter from the tenants' attorney-at-law threatening to sue it for failure to carry out repairs to the buildings.

Advise the Foundation.

QUESTION 6

On January 31, 1996, Scott demised a two-storey commercial building (located on unregistered land) to Brown for a term of 15 years. Rent of \$15,000 was to be paid monthly in advance.

By the lease Brown covenanted inter alia:

- (a) to use the building for a book shop and for business relating thereto;
- (b) not to use the premises (nor suffer or permit the same to be used) for any unlawful or immoral purpose.

In January 2008, it came to Scott's attention that:

- (a) Brown's wife, Ann, had recently been in trouble with the police for selling obscene magazines and videos as well as pirated CD's in the shop. Brown had actively encouraged his wife in this new venture;

- (b) Mary Jones is occupying the upper floor of the building as a sub-tenant. There is strong evidence that she is using the premises for the purpose of a sensuous massage parlour and that Brown had turned a blind eye to this.

The rent, which was due on April 30, in advance, was duly paid by Ann on behalf of her husband, Brown.

Scott would like to forfeit the lease and has now sought your advice. The lease, however, does not contain a proviso for forfeiture and re-entry.

Advise Scott.

QUESTION 7

On August 1, 2007, Benny, a disc jockey, became the monthly tenant of a studio apartment owned by Saul at Lime Gardens. He had been introduced to Saul by his friend, Orville, who had been paying \$3,000 per month immediately before he vacated in favour of Benny. Benny agreed to pay Saul \$3,700 per month but after six months, told Saul that the rental was too high and that the place was only worth \$3,000 per month. Saul has refused to accept the lower sum offered by Benny. In February this year (2008), Saul gave Benny one month's notice to quit. Benny has refused to vacate the premises and has paid no rent since.

On April 16 this year (2008), Saul decided to levy distress on the property of Benny and with two of his associates, entered Benny's flat by means of Saul's

duplicate key and took away a television, two DVD players and most of Benny's recording equipment worth thousands of dollars and sold them two days later.

Benny now seeks your advice.

Advise him.

QUESTION 8

- (a) Your client, Dwayne, is a happily married man with three children and is a lay preacher in his church. Lenny, a married man, has let a dwelling house from him which is subject to rent restriction legislation. He has discovered that Lenny is now living in the house with his mistress, Angie, and their children, although Lenny had agreed as a condition to the letting, that children would not live there. Further, it has been brought to Dwayne's attention that Angie is using the helper's room as a hair dressing parlour.

In the circumstances, Dwayne is very distressed and has sought your advice as to whether he can terminate the tenancy.

Advise Dwayne.

- (b) In 2006, Carol inherited a dwelling house (which is subject to rent restriction legislation) from her uncle. The house which is in a poor state of repair and has been so for many years, is let to Eva.

In January of this year (2008), Carol 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) the roof on the verandah was replaced and new rails were put around the verandah;
- (ii) large cracks in the walls were filled in;
- (iii) a new kitchen built of hollow blocks was erected in place of the original kitchen, the walls of which had fallen down;
- (iv) both the interior and the exterior walls of the building as well as the ceilings were painted.

The repairs having been completed at a cost of \$100,000, Carol now wishes to increase the rent for the premises. She has sought your advice.

Advise Carol.
