

COUNCIL OF LEGAL EDUCATION  
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE  
FIRST YEAR EXAMINATIONS, 2009

LANDLORD AND TENANT

(WEDNESDAY, MAY 20, 2009)

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 January this year (2009), Smiley entered into a lease for three years of an unimproved half ( $\frac{1}{2}$ ) acre lot of land from Bob. Bob claimed he held two acres under a five-year lease of which Smiley's lot is a part. The lease was in writing and rent was payable monthly in advance.

Smiley then built a wooden house on the lot and began living there with his girlfriend and three children.

Six weeks ago a Ms. Florida, a returning resident, went onto the land and claimed to be the owner of it. She stated that Bob's term had expired six months ago. She further instructed Smiley to pay no further rent to Bob but when it next became due to pay it to her.

Smiley, however, paid the rent as usual to Bob who insisted that he had a subsisting lease but admitted that Ms. Florida was indeed the new owner of the land as the beneficiary of her late mother's estate.

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

Smiley now consults you and seeks your advice.

- (i) Advise Smiley.
- (ii) Would your advice be different if Smiley had been a yearly tenant, the tenancy having started in March 2008?

## QUESTION 2

Andrew Twit, a mechanic, was employed by your client Shane Erkel as a supervisor/mechanic 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 mechanic as the garage is rather isolated and in the past it was difficult to get a mechanic without accommodation being offered. It formed part of the property leased to Shane by Alto Fuels Company. That lease contained an absolute covenant against subletting by the tenant. Shane, however, had authority to grant a licence to occupy the cottage to a person employed by the garage.

On February 1 this year (2009) Shane employed Andrew on the following terms –

*“Hours Monday to Friday 9 a.m. – 6 p.m. Lunch 1 p.m. – 2 p.m. Saturdays, 9 a.m. – 2 p.m. Wages \$8,000 per week. Overtime \$200 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 February 2, Andrew along with his girlfriend, children and furniture moved into the cottage. But his competence as a mechanic and his general demeanour proved unsatisfactory, so Shane gave him written notice on April 1 as follows –

*“To Mr. Andrew Twit. After three months’ 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, 2009. We also remind you that the cottage is to be vacated on April 30, 2009.”*

Shane now informs you that although Andrew 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 Shane.

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### **QUESTION 3**

Your client, Debbie-Ann Tray, who lives overseas, recently inherited an apartment which is part of a condominium/strata complex. The apartment was owned and occupied by her grandfather. She has no desire to occupy the apartment or to sell it at this time but instead wishes to lease it for at least the next five years.

Debbie-Ann tells you she has no knowledge of the legal considerations of leasing a condominium/strata unit and therefore wishes advice on the legal issues that she should be aware of in leasing the apartment.

Advise Debbie-Ann.

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### **QUESTION 4**

Your client, Sasha Flair, a young fashion designer and model, 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 setting will provide an environment that reflects the superior standard of today’s retailer. You will be guaranteed the right atmosphere for an upscale mall.”*

Impressed with this advertisement, in July 2008, Sasha entered into a written lease (with the usual covenants) of a downstairs unit (Unit 3) for three years, and commenced business in August 2008. The business took off quite well and she was able to attract a high-income clientele.

However, the landlords, Futuristic Company Ltd, as a result of the economic down turn had great difficulty renting the other ground floor units until January this year (2009), when they let Unit 2 to the Take Away Lottery Company and in 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 Sasha’s unit.

The establishment of these businesses was devastating to Sasha’s business whose upscale 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.

Sasha complained to the landlords on a number of occasions that they had breached the terms of the lease, but those complaints were ignored. She therefore withheld the rent

for March and April. Last week, the landlords threatened to sue her for the outstanding rent.

Advise Sasha.

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### **QUESTION 5**

By a lease made in 2005, Lilly let premises, comprising a two-storey dwelling house and a detached wooden building (the helper's quarters) to Terry, for a term of 25 years. The house was built in 1900 and is located in a prime residential area. The lower portion of the house is constructed of stone and the upper portion of wood which is covered with wooden shingles.

The lease contained the following covenant by the tenant –

*“To keep in thorough repair and good condition all the demised premises and to peacefully yield up to the landlord at the end of the term granted the premises being so repaired and kept together with all fixtures and fittings.”*

At the commencement of the lease, the walls of the upper portion were in a dilapidated state. Further, after a recent storm, one third of the roof, which had rotted over the years, blew away. In addition the wooden building was completely destroyed by the storm.

Two days ago Lilly wrote to Terry demanding that he repair the dwelling house and rebuild the wooden building.

You are consulted by Terry who seeks your advice as to his liability, if any, under the covenant.

Advise Terry.

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### **QUESTION 6**

Black is the tenant of a 3-bedroom house in a residential area. The house is not subject to rent restriction legislation. The lease is for a 5 year period and Black is assisted with the rental by his employer Publicity Ltd., who helped him to find the house when he was transferred from its out of town office to the capital city. The lease absolutely prohibits assignment or underletting. Six months after commencement of the lease, Black's wife and children went to live overseas and Black orally agreed to assign the lease to White. Black, however, reserved the right to use the helper's room for storing his furniture.

White, who owns two minibuses, uses the premises for repairing his vehicles and in addition has two "lodgers" living on the premises. The noise emanating from the premises is intolerably high because of the number of residents and the constant repairing of the buses which is usually accompanied by music blasting from multiple speakers installed in the vehicles.

The local citizens' association received several complaints and eventually wrote a letter to White and to Black's landlord, Brown, pointing out that such use of the premises was a nuisance and a breach of the restrictive covenants contained in the title.

Brown was aware that Black was not living on the premises but, since he was receiving rent from White as well as Publicity Ltd., he was not anxious to change the arrangement. Meanwhile, Publicity Ltd. discovers that Black is no longer living on the premises and ceases to pay the rent. Brown is very upset and serves White with notice to quit immediately.

Advise White.

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### **QUESTION 7**

Dan owns a house and shed, standing on a one-acre parcel of land. On March 1, 2006, he leased the entire premises to Jason, a motor mechanic and taxi driver, for ten years, at a yearly rent of \$360,000 payable in equal monthly installments. From the date of the lease, Jason has been living in the house and using the shed for his motor repair business. However, since January 1 of this year (2009) rent has been in arrears. Two weeks ago Dan's bailiff entered the premises and seized and carried away the following:-

From the shed:            a taxi owned by one of Jason's customers, a motorcycle and hydraulic jack, both owned by Ben and a car owned by Jason's wife.



From the house: a refrigerator, a rented television set and two king-size beds.

The bailiff also seized a taxi, owned by Jason, which was parked on the roadway adjoining the demised premises.

You are consulted by Jason who tells you that the goods seized were impounded at Dan's premises. He also tells you that two days ago he saw Dan riding the motorcycle in the city and yesterday he entered Dan's premises and carried away the motorcycle.

Advise Jason.

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### **QUESTION 8**

Mrs. Lark, a retired teacher, has been the monthly tenant of a small furnished apartment for the last twelve years. The apartment is part of a converted house subject to rent restriction legislation. The apartment has sleeping and cooking facilities but she shares a bathroom with another tenant. In addition she is permitted to enjoy the use of the garden although she has no legal right to do so. The house is located in a quiet residential area, but within walking distance of a shopping mall.

Last month her landlord, Mr. Benn, gave her notice to quit on the ground that the apartment was required for repairs - wooden floors and kitchen cupboards to be replaced. He has offered her alternative accommodation at 13 Main Street. This accommodation is again an apartment in a converted house, somewhat larger in size than her present apartment, but includes a bathroom of which she would have exclusive use. The house, however, has no garden.

Main Street is a busy traffic thoroughfare and immediately next door to the house in which the accommodation is being offered there is a fried fish and chicken shop. There is also a hospital, cinema and bar close by. It is a noisy area where at all hours of the day and night people are coming and going.

Mrs. Lark has come to see you for advice. She admits that the apartment on Main Street is more spacious and convenient in that it has its own bathroom. However, number 13 is an unlucky number and in addition the environment is quite unsuitable. She would only accept it if she was forced to. Further, she is of the view that the proposed repairs at her current apartment are not essential.

Advise Mrs. Lark.

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