

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2011

LANDLORD AND TENANT

(WEDNESDAY, MAY 18, 2011)

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

ANSWER BOTH (a) and (b)

- (a) Janice is a first year student at the National University. For the last two weeks she had been looking for a studio apartment in nearby residential areas without any luck. She faced two problems with the properties she saw. Either the rent was too high for her or the owners were unwilling to let to a student.

Finally, after trudging all day last Friday, she found a vacant apartment at a rental she could afford and for which her status was not against her.

As requested by the owner, Len, she paid one month's rent of \$25,000 and a security deposit of \$25,000. She paid both sums with a personal cheque.

It was agreed that she would receive the keys to the apartment on the Sunday as she had to go out of town to collect her personal effects and preferred not to have the keys until then. She would also receive the receipt at this time.

On Sunday afternoon, when she returned to the apartment, she found it occupied by another student, Clyde, who told her that he had rented it on the Saturday. Clyde then gave her an envelope from Len which contained the cheque she had given to Len. She then asked Clyde how much rent he had paid and he told her that it was \$40,000 per month.

Janice has now sought your advice. Advise her.

- (b) On January 1, 2007, Merlene entered into an agreement in writing with Tara to lease Whiteacre to Tara for the term of "one, three, five or seven years" at an annual rent of \$60,000, payable in advance in equal monthly installments.

Tara used Whiteacre for growing orchids and vegetables. On June 1, 2010, Tara served notice on Merlene that she intended to quit on January 1, 2011, but on that date Tara, unable to find a suitable alternative property to continue her business, tendered the rent which Merlene accepted as she subsequently did for February and March.

On March 10, 2011, Merlene died leaving the property to her niece, Laura, who now wishes to sell the property with vacant possession and seeks your advice.

Advise Laura.

QUESTION 2

On March 1, 2010, Roy, a racehorse trainer, employed Harry, as a horseman, to help with the horses in his stables. Harry's job was to exercise and feed the horses every morning and afternoon and to groom them during the day. Harry had recently been deported from the USA so Roy allowed him to occupy a small cottage, Cottage No. 1, on Roy's property which was adjacent to the stables. Roy told Harry that he could occupy it as it would facilitate the better performance of his job if he lived close by. Roy and Harry agreed that a token sum of \$1,000 per month would be deducted from Harry's pay for this purpose. Harry's salary was \$30,000 per month.

On August 15, 2010, a friend of Roy asked him whether he could provide accommodation for his nephew Sean in another unoccupied cottage on Roy's property – Cottage No. 2. Roy agreed, and Sean entered into occupation on September 1, 2010. Roy's wife provided meals for Sean and at the end of each week would let herself into the cottage with her own keys to clean it and to change the linen and towels. Sean paid Roy \$20,000 per month for this service.

Last week, Roy learnt that Harry has accepted a job as a jockey with a rival stable. On the following day he also learnt that Sean had been in trouble with the police for driving a friend's car without a licence. Roy now wants them to vacate his cottages and to this end has given one week's notice to each. Neither cottage is subject to rent restriction legislation.

Harry and Sean seek your advice. Advise them.

QUESTION 3

Lisa, the owner of a block of apartments, not subject to rent restriction legislation, granted Tracy a three year lease of a one-bedroom apartment. The lease did not contain a covenant for quiet enjoyment.

- (i) Lisa has started to construct a swimming pool in an open space in front of Tracy's apartment for the use of all the tenants. Tracy cannot swim and she complains that the noise and the dust created by the construction are intolerable.
- (ii) Lisa regularly uses a duplicate key to enter and inspect Tracy's apartment in her absence.
- (iii) Ivy Keyes, who is a member of a world famous jazz band, is the tenant of the apartment immediately above Tracy's. Tracy complains that Ivy's piano playing disturbs her and that water from a defective bath in Ivy's apartment recently began seeping into her apartment. This has caused damage to her carpet.
- (iv) Cockroaches from a garbage skip located in a common area of the apartment complex close to Tracy's apartment have been invading her apartment.

Advise Tracy.

QUESTION 4

In October 2009, Miser granted Tony and his girlfriend Tanya a monthly tenancy of a small two-bedroom house (not subject to rent restriction legislation) at a rental of \$30,000 per month.

Tony and Tanya covenanted *inter alia* as follows -

“The tenants covenant at all material times to use the premises in a tenant-like manner fair wear and tear excepted”.

Miser, on the other hand, covenanted *inter alia* as follows –

“The landlord covenants to keep the premises in good repair”.

Tony and Tanya’s relationship is an unhappy one and they frequently fight and throw objects at each other. As a result they have broken the rear door, an interior door, smashed a number of windows and damaged the basin and bathtub in the bathroom.

As a result of the damage to the rear door and windows during the rainy season last year (2010) water blew into the house regularly. This resulted in damage by way of wood rot to the wooden floors, window sills and the paint on some walls with resultant fungus infection.

Upon a recent inspection of the house, Miser noted the damage to the house and has requested that Tony and Tanya carry out the necessary repairs within thirty days or have them done by him and the bill sent to them.

Tony and Tanya have now come to see you for your advice.

Advise them.

QUESTION 5

By a deed dated December 31, 2000, Nica granted a lease of a farm of which she was the owner in fee simple to Petrus for 20 years, commencing January 1, 2001. The lease contained a covenant by the lessor that –

“If the lessee at any time during the term hereby granted shall give to the lessor six months notice in writing that he desires to purchase the reversion in fee simple in the demised premises the lessor shall upon the expiration of such notice and on payment of the sum of \$5M and all arrears of rent up to the expiration of such notice shall convey the demised premises to the lessee in fee simple free from all encumbrances”.

On August 7, 2009, Nica sold and conveyed the farm to Wren in fee simple, and on May 4, 2010, Petrus assigned his lease to James.

James now wishes to purchase the fee simple in the farm from Wren.

- (i) Advise James.

 - (ii) What would your advice be if, instead of the above-mentioned covenant, the lease contained a covenant giving Petrus an option to renew the lease for a further term of 20 years only?
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QUESTION 6

Lance, on June 1, 2005, demised a two-storey commercial building (located on registered land but not subject to rent restriction legislation) to Thomas for a term of 10 years. Rent of \$30,000 was to be paid monthly in advance.

By the lease Thomas covenanted *inter alia* –

- (a) to use the premises for a printery, book shop and related activities;
- (b) not to use the premises (nor suffer or permit the same to be used) for any unlawful or immoral purpose.

In January this year (2011) it came to Lance's attention that:

- (i) Thomas' wife Victoria has recently been in trouble with the police for selling obscene magazines and DVD's in the shop and that Thomas encouraged his wife in this activity;
- (ii) Millicent Marples is occupying the upper floor of the building as a subtenant. There is good evidence that she is using the premises for the purpose of a sensuous massage parlour and that Thomas has 'turned a blind eye' to this activity.

The rent, which was due on May 1, in advance, was duly paid by Victoria on behalf of her husband Thomas and accepted by Lance.

Lance would now like to terminate the lease and has sought your advice. He tells you, however, that the lease does not contain a forfeiture and re-entry clause and blames this on his attorney-at-law.

Advise him.

QUESTION 7

By lease dated November 1, 2005, Green let a three-bedroom house to Rose for seven years at a monthly rent of \$40,000, payable in advance. Rose is a piano teacher and converted one of the bedrooms into a piano studio. Rose last paid rent on January 1, 2011.

On May 1, 2011, at about 3:00 p.m., Green 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, which had been thrown loosely on a counter in the kitchen, and a DVD player, TV and a digital camera from the living room. He placed all the items by the door.

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 \$160,000.

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

QUESTION 8

Miss Rowena Diaz has come to see you. She tells you that yesterday afternoon when she returned to her rented apartment, having been away on holiday, she found the door locks changed and on looking inside through a window she observed that all her furniture had been removed. She then went next door to tell her neighbour what had happened. Her neighbour informed her that her landlord had changed all the locks and sold her furniture to a second-hand furniture dealer, saying that Rowena had abandoned the apartment and at any rate he needed it for his own use and occupation.

Rowena further tells you that she is a monthly tenant and that her landlord, Christopher Yuen, had from time to time made advances towards her which she repeatedly repelled. Recently he became more aggressive so she decided to take her vacation leave and go overseas for a month. She also paid the rent for the period she would be away so as to ensure that he would have no grounds on which to terminate her tenancy. The apartment is subject to rent restriction legislation.

She now seeks your advice.

- (i) Advise Rowena.

 - (ii) Would your advice be any different if she had not paid rent for the last month and was therefore in arrears?
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