

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2014

LANDLORD AND TENANT

(WEDNESDAY, MAY 14, 2014)

Instructions to Students

- (a) Time: **3½ 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 black or dark blue ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

- (a) On January 1, 2012 Robin Limited entered into a five-year lease with Perk Development Limited. The lease was in writing and rent was payable monthly in advance. Under the lease, Robin Limited was entitled to an option to purchase the property at fair market value. Robin Limited has been operating its Same Day Loan business, with bold signs, since February 1, 2012. On January 18, 2014 Robin Limited became aware of the fact that Perk Development Limited had entered into an agreement for sale of the property to JW Pension Fund Limited.

On February 1, 2014 Robin Limited, through its attorney-at-law, submitted to Perk Development Limited a notice wherein the company indicated that it would exercise its option to purchase the property.

JW Pension Fund Limited recently became aware of Robin Limited's position and has consulted you for advice regarding its rights under the agreement for sale.

Prepare a letter of advice to JW Pension Fund Limited.

- (b) In January, 2012 Robert Martin rented a dwelling house from Jack Deacon for a fixed term of 7 years. E. Bank Limited has a registered mortgage on the demised premises since 2000. Jack has defaulted on the loan payments and E. Bank Limited is exercising its power of sale. E. Bank Limited has requested that Robert vacate the premises within 14 days. Robert has come to you for advice.

Advise him.

QUESTION 2

At the end of October 2013, Bert purchased a dwelling house which is exempt from rent restriction legislation. The house has been occupied under an oral monthly tenancy for some ten years by Tanya who has used it as a residence for herself and her four children. Tanya has also, since 2003, run a day-care centre in a small structure located in a corner of the garden on the property.

In mid-March 2014, Tanya went on holiday and instructed her eldest son to pay the rent in cash, as was required, to the new landlord, Bert, at his place of business. Rent was due on April 1, 2014. On Tanya's return on April 16, she discovered that the rent for April had not been paid and immediately delivered a personal cheque for the arrears to Bert's wife at his residence.

The following day (April 17) Tanya received from Bert a notice to quit in one month's time for arrears of rent. Further, he ordered her to immediately discontinue operating the day-care centre as the premises were for residential purposes only.

Tanya 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 day-care centre even though it was located in a residential area.

Tanya now seeks your advice.

- (i) Advise Tanya.
- (ii) Would your advice be any different if the premises fell under rent restriction legislation? Explain.

QUESTION 3

On January 1, 2010, James Brown entered into a Deed of Lease with Mayfair Company Limited in respect of commercial premises for a fixed term of 10 years at a rent of \$250,000 per month payable to a bank account in the name of National Leasing Company. Mayfair Company Limited holds the premises under a 25-year lease from National Leasing Company. That lease commenced on January 1, 1995. This premises is not regulated by rent restriction legislation.

James operated a consultancy firm from the premises with the appropriate business signs. In September, 2012 he incorporated a company, J Consultancy Limited, and assigned all his business assets to the company by way of an agreement under hand. James died in January of this year but J Consultancy Limited continues to do business from the premises.

The agreement between James Brown and Mayfair Company Limited was substantially a replica of the agreement between Mayfair Company Limited and National Leasing Company. Both agreements contained the following covenants:

Clause 10 - "not without the written consent of the landlord to assign, underlet or part with possession of the property or any part thereof; such consent not to be unreasonably withheld."

Clause 14 - "in the event of a material breach, the agreement may be terminated in the same manner as would apply if it were a yearly tenancy."

Six (6) months' rent is owing and National Leasing Company has served notice on J Consultancy Limited that it should immediately vacate the premises because it is a trespasser. In its letter to J Consultancy Limited, National Leasing Company also outlines that if the rent is not settled within 7 days it will be filing a claim against J Consultancy Limited and Mayfair Company Limited for rent in arrears.

National Leasing Company is not making any progress with getting J Consultancy Limited out of the premises and has come to you for assistance.

Prepare a legal opinion which addresses the following issues:

- (i) the meaning of the lease covenants highlighted above;
- (ii) whether James was in breach of the covenant specified in clause 10;
- (iii) assuming the lease had passed to J. Consultancy by way of transmission from the estate of James, whether James' estate would have been in breach of the clause 10 covenant;
- (iv) which parties National Leasing Company would be entitled to sue for the arrears of rent; and
- (v) whether National Leasing Company is entitled to terminate J Consultancy Limited's occupation of the premises and what procedure it should follow.

QUESTION 4

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 offers 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, on July 8, 2013, Monica entered into a monthly lease in writing (with the usual covenants) of a downstairs unit (Unit 3), and commenced business in August 2013. 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 (2014), when they let Unit 2 to the Horse Race Betting Company and February when they let Unit 4 to Greasy Knave Fast Foods. The latter then placed tables and chairs on the walkway outside the Unit which limited access to Monica's unit. In March, neighbouring premises owned by AZE Company were rented to Pablo's Exotic Night Club.

The establishment of these businesses was devastating to 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 resulting in noise and commotion. On most Monday mornings when she arrived at the shop the windows were spray-painted by party-goers.

Monica complained to AZE Company on a number of occasions and has been withholding the rent for April and May.

Monica has come to you for advice about:

- (i) whether the landlord is in breach of the lease;
- (ii) whether the landlord can sue her for the outstanding rent; and
- (iii) your recommendation as to how she should deal with the situation.

Advise Monica.

QUESTION 5

In September 2013, Pennypincher granted Mark and his girlfriend, Michelle, a monthly tenancy of a small studio unit in an apartment complex (not subject to rent restriction legislation). The parties agreed the rent at \$10,000 per month.

Mark and Michelle 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.”

Pennypincher on the other hand covenanted, *inter alia*, as follows-

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

Mark and Michelle’s relationship is an unhappy one and they frequently fight. They have broken the rear door, smashed a number of windows and damaged various fixtures in the bathroom. As a result of the damage to the door and windows, during the rainy season late last year (2013), water came into the apartment regularly. This resulted in damage by way of wood rot to the wooden floors, window sills and to the paint on some walls, with resultant fungus growth.

Upon a recent inspection of the apartment, Pennypincher noted the damage to the premises and is very upset. He has written to Mark and Michelle demanding the following actions:

- (i) that they carry out the necessary repairs within thirty (30) days or have them done by him and the bill sent to them;
- (ii) immediately pay all outstanding maintenance, in respect of which he has been recently notified by the strata/condominium manager that no maintenance has been paid since September, 2013; and
- (iii) immediately pay the property tax due for the period 2014/2015, which the tax office advised him had not been paid on the due date.

Mark and Michelle have come to you for advice. They have provided you with a copy of the lease agreement and you notice that it contains no express provision regarding strata/condominium maintenance and property tax.

Advise Mark and Michelle.

QUESTION 6

On May 1, 2009, James leased a large two-storey building to Brown for 15 years at a yearly rent of \$18,000 payable by equal monthly instalments. From the date of the lease, Brown and his wife Sonia have been living on the first floor while he (Brown) used the ground floor as a workshop for the repair of domestic appliances. Sonia is a music teacher and conducts classes on the premises. Rent for the last six months is in arrears. Last Monday at 4:00 p.m., a bailiff acting on the instructions of James, lawfully entered the premises and seized and carried away certain items.

From the first floor he took a bed, an electric clock and a piano. He also took four new dresses belonging to Sonia, and a television set on loan to Brown from his neighbour Kate. From the ground floor he took a washing machine which was left by Kate for repairs, a box of tools and a welding plant.

The total value of the articles seized amounts to approximately \$200,000.

Advise Brown, Sonia and Kate.

QUESTION 7

- (a) Prepare a legal memorandum on the procedure for termination of a lease, recovery of possession, and ejectment of a tenant of residential premises leased to a monthly tenant (commencing on the 5th of each month) who currently owes two (2) months' rent. The premises are regulated by rent restriction legislation.
- (b) Prepare a legal memorandum on the circumstances in which a landlord may forfeit a lease for non-payment of rent and the circumstances in which the tenant may be entitled to relief from forfeiture.
-

QUESTION 8

Jurg Smithe works with BP Media Company as a computer technician. He is responsible for ensuring that the company's technology down time is minimal. Before returning to live in the jurisdiction with his girlfriend, Jurg lived in Switzerland with his parents and so he was happy when his package with BP Media Company included the following terms:

"Office Hours Monday to Friday 8 a.m. to 5 p.m. Lunch 1 p.m. – 2 p.m.
Saturdays, 8 a.m.– 1 p.m. Salary \$10,000 per week. Overtime \$400 per hour.
Cottage on office compound rent free, whilst employed. Holidays, two weeks paid holiday a year with the normal public holidays. Notice of termination – one month to be served either way."

Jurg moved into the cottage and started work with BP Media Company in November, 2013.

While in Switzerland, Jurg worked as an animation artist and he wanted to develop an animation studio in the jurisdiction. While working at BP Media Company he worked on that project on his own time. In December 2013 he entered into an agreement to purchase a small building for the studio. This transaction was set for completion in April, 2014. The owner, Pedro Black, granted Jurg exclusive possession of the building in January, 2014 as the building was vacant. Jurg agreed to pay all utilities, maintain and insure the premises as of January, 2014.

As a result of his work on the animation project Jurg missed several days of work with BP Media Company and when he showed up he was tired, ineffective and negligent. On May 1, BP Media Company terminated his contract with one month's notice on the ground of non-performance. He was asked to vacate the cottage by May 31, 2014.

The Property Loan Agency recently wrote to Jurg indicating that his loan and mortgage applications were not approved. Mr Black is a director of the Property Loan Agency and became aware of this information. He served a notice on Jurg requesting that he vacate the premises within 7 days.

Jurg believes that he is a tenant of both premises and wants to continue using the cottage as a residence and the small building for his business.

Jurg comes to you for advice. Advise him.

END OF PAPER