

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2015

LANDLORD AND TENANT

(WEDNESDAY, MAY 13, 2015)

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

Your client, Alando Bonapart, who is a diplomat with the German Embassy, is in great distress and comes to see you.

His instructions are that three months ago he leased a villa from Jethro Tapanaris, for a term of three years. Jethro, a property developer, owns three other villas on the same premises.

Alando further tells you that at the time of the demise, the other villas were unoccupied. One month ago, however, a family moved into one of the villas. The family owns three dogs, including a Rottweiler, which are their children's pets. The dogs are allowed to roam their yard with little supervision and are often seen at the 4-foot wooden picket fence, which separates the properties. The dogs are highly excitable and often fight. They bark loudly, especially at nights, and Alando says he is acutely sleep-deprived as a result. Alando's young daughter, Mitzi, is terrified of the dogs and does not want to play outside in the well-appointed yard.

To compound matters, he tells you that last week workmen started working on another villa, which was severely damaged by a fire that occurred sometime ago and will require extensive work to repair it. The workmen worked from 7 a.m. until 6 p.m., Monday to Saturday, which is most distressing to Alando's wife, Isabella. The workmen often saunter around the property generally, smoking marijuana. They also carry on loud and sometimes lewd conversations, creating what Alando and Isabella consider an undesirable environment for them and their children. The swimming pool is hardly used by Alando and his family, since debris from the construction work being carried out, often finds its way into the pool.

He shows you his lease, which you note does not include any covenant on behalf of the landlord for quiet enjoyment. Alando wants to know what he can do about the very difficult living situation he now finds himself in.

Advise Alando.

QUESTION 2

In April 2012, Rory granted a lease of a dwelling-house to Ashanti at a rent of \$120,000 per annum payable by equal monthly instalments at the end of every month.

The lease contained the following covenants by the tenant, *inter alia*:

- (i) to pay the rent reserved at the times and in the manner aforesaid;
- (ii) to keep the premises at all times in good and tenantable repair, fair wear and tear excepted;
- (iii) not to assign, underlet or part with possession of the demised premises without the consent of the landlord, such consent not to be unreasonably withheld.

The lease also contained a proviso for re-entry and forfeiture if the rent is in arrears for 21 days, “whether formally demanded or not”, and also for breach of any other covenant contained in the lease.

On May 15, 2012, Ashanti sublet the downstairs of the house to Barnaby, a reputed lotto scammer, without obtaining the landlord’s consent. Several shingles on the roof have crystallised and some have recently fallen off, causing the house to leak when it rains. Rory had written to Ashanti requesting that she fix the roof but he received no reply. Ashanti last paid rent in February this year (2015).

- (i) Advise Rory whether he can forfeit the lease and, if so, what action he should take.
- (ii) If Rory can forfeit the lease, advise him as to whether Barnaby can obtain relief against forfeiture.

QUESTION 3

- (a) On December 1, 2010, Renters Ltd, the landlords of commercial premises at 184 High Street, demised premises to Jacinth as a quarterly tenant. The demised premises, comprised of a shop on the second floor and a storeroom on the ground floor of the building, are not subject to rent restriction legislation.

On April 1, 2015, Renters Ltd gave Jacinth notice to quit in the following terms:

“Dear Jacinth,

We the undersigned, Renters Limited, give you notice to quit and deliver up possession of the shop at 184 High Street in respect of which you are a tenant, on July 31, 2015.”

Advise Jacinth.

- (b) On Wednesday April 8, 2015, Wingrove rented “Briarwood Cottage” from Trecia as a monthly tenant. He paid her a month’s rent of \$20, 000 in advance and received the keys to the cottage.

On Thursday April 9, 2015, on arrival at work, Wingrove was told that he was being transferred, on the following Monday, to the company’s head office in another parish/district.

Later that day Wingrove visited Trecia and told her of his transfer. He also gave her one month’s notice in writing of his termination of the tenancy. He offered her the keys to the cottage and requested the return of the rent. Trecia refused to accept the keys or to return the rent paid. In addition she told Wingrove that in her view the notice was invalid.

Advise Wingrove.

QUESTION 4

On May 1, 2010, Henry leased a large two-storey building to Princess for 15 years at a yearly rent of \$300,000, payable by equal monthly instalments. From the date of the lease, Princess and her partner, Pinchas, have been living on the first floor while Princess, a hairdresser, used the ground floor as a salon for her hairdressing business.

Rent for the last six months is in arrears. Last Monday, a bailiff, acting on the instructions of Henry, lawfully entered the premises and seized and carried away certain items.

On the first floor, the bailiff kicked down the door to the master bedroom and seized a king-size bed and the bed linen thereon, a DVD player which belonged to Pinchas and four new dresses, the property of Princess. He also took a new 52" Samsung smart television set, on hire-purchase from Blingers Appliances Ltd., which was in the living room.

From the ground floor, which Princess has been using as her hair salon, the bailiff took a hairdryer, which was being used by one of Princess's clients who was, at the time, drying her hair. He further seized several cartons of No. 1 Mexican hair and an iPhone, which belonged to another of Princess's clients, Foxy. Foxy's phone was being charged at the time.

The bailiff then seized the keys to Princess's 2014 BMW SUV. Princess, suddenly realising what was happening, shouted to Pinchas, who was in the salon at the time, "Pinchas run wid it". Whereupon, Pinchas grabbed the keys from the bailiff, jumped into the SUV and drove off at great speed.

The bailiff, who seized items totalling a value of \$1,225,000, refused to tell Princess where the items were being taken to or would be stored.

Advise Princess.

QUESTION 5

In August 2011, Janak, a lecturer in Hypnotic Therapy at the Learn Fast College of Higher Education, occupied a house provided by the college on their campus. The college withheld 10% of Janak's salary each month for housing.

In August 2012, in an effort to make up for the 10% deduction from his salary, Janak let the self-contained studio apartment attached to the house to Wilcy, a student at the college, for a fixed term of three years at a rental of \$10,000 per month, excluding water and electricity. Wilcy, who offered a catering service for small events, from time to time, in order to help pay his school fees, undertook to prepare meals for Janak on weekends when his studies permitted. On each occasion when he did so, Janak gave him a rebate of \$1,000 on the rent for the month.

In April this year (2015) Janak's contract with the college was terminated and he has left the country. Last week, Wilcy received a letter from the college instructing him to vacate the premises, with immediate effect, on the basis that he is a mere trespasser because Janak had no authority to allow him occupation of the studio apartment and that, in any event, Janak is no longer employed to the college.

Wilcy is very anxious to remain in occupation as he has to take his final exams in July and would prefer not to have the distraction of house hunting at this time. He also tells you that in his effort to remain in good graces with Janak, he had actually paid the rent up to July 2015.

Advise Wilcy.

QUESTION 6

In January 2007, Aileen granted Pablo, a used car dealer, a 10-year lease of a half-acre lot for use as a car park and vehicle storage area. The lease provided that the rent was \$600,000 per annum payable monthly in advance and that Pablo would “keep in good repair” the chain link boundary fence surrounding the premises.

Last year (2014) Pablo discovered that the boundary fence was rusting very badly as a result of faulty manufacturing. Also, since last year, the entrance to the premises has been obstructed by building contractors employed by the local water authority, who have been carrying out major works on the sewage system.

Pablo wrote to Aileen in relation to both of these matters, requesting that Aileen replace the boundary fence and request the local authority to reorganise its works so as to clear the entrance to the premises. Aileen did not respond.

As a result of the local authority’s works, the entrance to the premises has remained obstructed, rendering the business inoperable since then.

Since February this year (2015) Pablo has refused to pay rent. Aileen has now written to him demanding the outstanding rent and requesting that he carry out the necessary repairs to the fence.

Advise Pablo.

QUESTION 7

In June 2014, the Our Lady of Mercy Church (the “Church”) inherited an apartment complex from one of its devoted elders.

The complex, which consists of ten one-bedroom apartments and ten studio apartments, is considered ideally located in an area close to several tertiary educational institutions and a popular shopping area.

The Church therefore decided to use the ten studio apartments to accommodate some students it sponsors at universities located in the vicinity of the complex. These students are the children of less fortunate church members.

In an effort to defray the costs associated with the sponsorship of these students and to assist with the upkeep of the complex, the Church also decided to offer paid accommodation to young working adults who are church members.

Your client, Okindo Macala, who was a member of the Church until April this year (2015), had entered into an agreement to rent a one-bedroom apartment. He tells you that he had a disagreement with the Church Board and as a result he left the Church.

The agreement which he shows you, was executed by himself and the Church Board and provides *inter alia*:

“RESPONSIBILITIES OF RESIDENTS

- (a) To pay the rent (which includes a flat rate for water and electricity that is subject to review each semester) and the security deposit on or before the agreed date. All other charges are to be paid separately.

- (b) To keep the surroundings clean at all times: the interior of the premises, the porch area, the garden and yard area must be clean and tidy at all times;

windows must be washed regularly. The owners will undertake the cleaning of all common areas. If, for any reason, the common areas need to be cleaned beyond the ordinary, the residents will be charged for additional cleaning.

- (c) In the event of any damage to the premises or furniture specified in the attached inventory (fair wear and tear excluded) caused by a resident or his/her guest(s), the resident will forfeit his/her security deposit. If the cost of repairs exceeds the deposit, the resident must pay the difference.
- (d) Not to alter the structure of the premises or carry out any redecoration (including the erection of shelving) without the approval of the Administrative Assistant. Wall hangings may be done using only mapping pins.
- (e) To ensure that no disturbance or inconvenience is caused to fellow residents by anti-social behaviour such as allowing guests to invade the common areas in a fashion that causes annoyance or impedes the usage of other residents. Noise must be kept at a minimum especially at nights.
- (f) Not to assign or part with anything belonging to the owners.
- (g) Not to accommodate any guest(s) of either sex overnight on the premises. All guest(s) must sign in and out and must vacate the premises by 10:30 p.m. No exceptions will be made.
- (h) To use electricity and water conservatively. All lights must be turned off when not in use.
- (i) Not to do or allow to be done any action which results in the owner's insurance policy being made void or the premiums increased.
- (j) Not to smoke inside any of the buildings or rooms.
- (k) Not to keep animals on the premises.

- (l) To give one month's notice of intent to terminate the tenancy.

Anyone found in violation of these regulations will be asked to leave with immediate effect and will forfeit all sums paid.

OBLIGATIONS OF THE OWNERS

- (a) To pay all water, electricity and taxes and assessments due for the premises.
- (b) To maintain and repair the structure and fabric of the premises, including drains, plumbing water and electrical installations.
- (c) To respect the residents' right to reasonable privacy.
- (d) The owners reserve the right to periodically inspect the residences to ensure compliance with the rules.
- (e) Where there is a clear breach of the Tenancy Agreement on the part of the residents, the owners will seek repossession of the premises by serving the tenants a formal written notice stating the ground under which repossession is sought. The period of notice will usually be one month unless circumstances require immediate repossession."

The Church has now given Okindo one week's notice to quit the apartment and he seeks your advice as to his rights in the circumstances and the options that may be open to him.

Advise Okindo.

QUESTION 8

On January 31, 2003, Heskith demised a two-story commercial building to Andy for a term of 15 years. Rent of \$25,000 was to be paid monthly in advance.

By the lease, Andy covenanted *inter alia*:

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

In January 2015, it came to Heskith's attention that:

- (i) Andy's wife, Helen, had recently been in trouble with the police for selling obscene magazines and DVDs, as well as pirated CDs, in the shop. Andy had actively encouraged Helen in this venture; and
- (ii) Marie is occupying the upper floor of the building as a sub-tenant. There is strong evidence that she is using the premises as a sensuous massage parlour and that Andy has turned a blind eye to this.

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

Heskith seeks your advice on the legal issues he must take into account and the options open to him.

Advise Heskith.

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